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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1942**

**No. 590**

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**HARRIS KENNEDY, ET AL., PETITIONERS,**

**vs.**

**SILAS MASON COMPANY**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

---

**PETITION FOR CERTIORARI FILED FEBRUARY 12, 1943.**

**CERTIORARI GRANTED MARCH 2, 1943.**

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**UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION.**

**No. 1594 Civil**

**HARRIS KENNEDY, ET AL**

**versus**

**\*SILAS MASON COMPANY..**

**TRANSCRIPT OF APPEAL Taken by Complainants to the United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana.**

**Appearances:**

**Turner B. Morgan, Esquire,  
Messrs. Booth, Leckard & Jack,  
Attorneys for plaintiffs-Appellants.  
Messrs. Cook, Clark & Egan,  
Attorneys for defendant-Appellee.**

**1 COMPLAINT.**

**(Title Omitted.)**

**To the Honorable Judges of the United States District Court of America in and for the Western District of Louisiana, Shreveport Division:**

**The complaint of Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, James E. Fitch and**

Harry Johnson, all residents of the Parish of Caddo, State of Louisiana, with respect, represents:

1.

That the Silas Mason Company is a foreign corporation authorized to do and doing business in the State of Louisiana.

2.

That the Silas Mason Company during the past several years has been engaged in commerce and in the production of goods for interstate commerce as those terms are defined by the Fair Labor Standard Act, being an Act of Congress, June 25, 1938, c. 676, 52 Statute 1060, 29 U. S. C. A. 203, in that the Silas Mason Company, during said period of time, has been engaged in the operation of a shell loading plant known as the Louisiana Ordnance Plant, which plant is located between Minden and Shreveport, Louisiana, on Highway No. 80 within Webster Parish, Louisiana, and within the Western District of the State of Louisiana, and which plant has produced, manufactured, fabricated and loaded shells, ammunition, bombs and other products and materials, all of which went into interstate commerce.

3.

That during its entire operations in the State of Louisiana as aforesaid, the said Silas Mason Company has been subject to the Fair Labor Standards Act and Walsh-Healey Public Contract Act (41 U. S. C., Sections 35-45) in that the Silas Mason Company, during its entire operations in Louisiana, has been operating under a contract with the War Department of the United States in

volving in excess of \$10,000.00 for the manufacture and furnishing of materials, supplies and equipment to the War Department.

4.

That all of the work performed by the complainants for the defendant and hereinafter detailed was performed by the complainants directly in connection with commerce and the production of goods for interstate commerce and in direct connection with the defendant's contract with the War Department of the United States and that complainants were at all times during their employment by the defendant as hereinafter detailed covered by the provisions of the Fair Labor Standards Act and by the Walsh-Healy Public Contracts Act.

5.

That Harris Kennedy was employed by the defendant as a safety inspector from December 2nd, 1944, through June 16th, 1945, but that he was required to work in excess of 40 hours per week and did work the number of hours in excess of 40 per week as shown on Schedule "A" attached hereto and made a part hereof, being compensated only for 40 hours work per week at \$1.25 per hour, the established rate for his classification.

6.

That Howard S. Sweatt was employed by the defendant as a safety inspector from December 9th, 1944, through June 30th, 1945, but that he was required to work in excess of 40 hours per week and did work in excess of 40 hours per week as shown on Schedule "B" attached hereto and made a part hereof, being compen-

4

sated only for 40 hours per week at \$1.25, the established rate for his classification.

7.

That L. M. Williams was employed by the defendant as a Chief Shift Inspector, Process, from August 13th, 1944, through April 12, 1945, but that he was required to work in excess of 40 hours per week and did work the number of hours in excess of 40 hours per week as shown on Schedule "C" attached hereto and made a part hereof, being compensated only for 40 hours per week at \$1.50 per hour up until November 11, 1944, and only for 40 hours per week at \$1.62½ per hour after November 11, 1944, the established rates for his classifications.

8.

That William S. Jones was employed by the defendant as a foreman, Classification B-2, from July 29th, 1944, through June 23rd, 1945, but was required to work in excess of 40 hours per week and did work in excess of 40 hours per week the number of hours shown on Schedule "D" attached hereto and made a part hereof, being compensated only for 40 hours per week at \$1.75 per hour up until December 9th, 1944, and at \$1.87½ per hour after December 9th, 1944, the established rates for his classifications.

9.

That Harry Johnson was employed by the defendant as a foreman from August 12th, 1944, through July 14th, 1945, but was required to work in excess of 40 hours per week and did work the number of hours in excess of

40 per week as shown on Schedules "E" and "F" attached hereto and made a part hereof, being compensated only for 40 hours work per week at \$1.62½ per hour, the established rate for his classification.

10.

That James E. Fitch was employed by the defendant as a safety inspector from December 2, 1944, through June 23rd, 1945, but was required to work in excess of 40 hours per week and did work in excess of 40 hours per week the number of hours shown on Schedule "F" attached hereto and made a part hereof, being compensated only for 40 hours work per week at \$1.25 per hour, the established rate for his classification.

11.

That under the Fair Labor Standards Act, the Walsh-Healy Act, the rules and regulations of the Department of Labor, of the Administrator of the Fair Labor Standards Act and under the wage classifications and wage scales duly promulgated for the defendant Company, your complainants should have been compensated for all hours in excess of 40 per week at time and one-half and double time for all work performed on Sundays and holidays.

12.

That the defendant company consistently followed the practice, not only with your complainants but with all its other employees in similar positions, of docking or deducting from their pay for all time less than 40 hours per week, even for as much as 15 minutes, the deductions being figured on an hourly basis and your com-

plainants were required to punch a clock in order that their time could be ascertained.

13.

That none of your complainants come within any of the Exemptions provided for by law or by rules and regulations promulgated by those charged by law to promulgate such rules and regulations and on the other hand, your complainants show that they have not been paid in accordance with law.

14.

Your complainants show that a direct cause of action against the defendant is granted them by law and that jurisdiction is conferred upon this Honorable Court by the several Acts of Congress.

15.

Your complainants show that by virtue of the defendant's refusal and failure to pay your complainants any compensation for over time worked in excess of 40 hours per week, the defendant is indebted unto your complainants double the amount due them as a penalty and that the defendant is therefore indebted unto complainants in the amounts shown on Schedules "A", "B", "C", "D", "E", "F", and "G" attached hereto and made a part hereof.

16.

Your complainants further show that the defendant is indebted unto them for a reasonable attorney's fee as is provided for by law and that in this connection,

your complainants show that they have been forced to hire an attorney to handle this case for them and that they should be awarded in addition to the other sums herein prayed for an additional sum of Twenty-five Hundred Dollars as a reasonable attorney's fee.

## 17.

Complainants allege amicable demand without avail.

Wherefore, your complainants pray that the defendant be served with a copy of this complaint and cited to appear and answer same within the delays granted by law and that after a hearing duly had that there be judgment herein in favor of your Complainants and against the Silas Mason Company as follows:

In favor of:

Harris Kennedy, the sum of Six Hundred Ninety-Nine and 87/100 (\$699.87) Dollars with legal interest thereon from judicial demand until paid.

Howard S. Sweatt, the sum of Six Hundred Twenty-Six and 25/100 (\$626.25) Dollars with legal interest thereon from judicial demand until paid.

L. M. Williams, the sum of One Thousand Two Hundred Thirty-Six and 87/100 (\$1,236.87) Dollars with legal interest thereon from judicial demand until paid.

William S. Jones, the sum of Two Thousand One Hundred Seventy-Six and 50/100 (\$2,176.50) Dollars with legal interest thereon from judicial demand until paid.

Harry Johnson, the sum of One Thousand Two Hundred Sixty-five and no/100 (\$1,265.00) Dollars with legal interest thereon from judicial demand until paid.

James E. Fitch, the sum of Three Hundred Ninety and no/100 (\$390.00) Dollars with legal interest thereon from judicial demand until paid.

Your complainants further pray for all costs and further judgment in their favor and against the defendant in the sum of Two Thousand Five Hundred (\$2,500.00) Dollars as a reasonable attorney's fee.

For all general and equitable relief.

(Sgd.) TURNER B. MORGAN,

(Turner B. Morgan)

Attorney for Complainants.

(Affidavit omitted.)

### SCHEDULE "A".

Harris Kennedy—#830—Safety Inspector.

Week Ending Date	Rate Per Wk. \$50.00	1½ @ \$50.00	Double @ \$50.00	Total Hrs. Worked
12- 9-44	40	8		48
12-16-44	40	8		48
1- 6-45	40	8		48
1-13-45	40	8		48
1-20-45	40	8		48
1-27-45	40	8		48
2-17-45	40	8		48
3- 3-45	40	8		48
3-10-45	40	8		48
3-17-45	40	8	7	55

Week Ending Date	Rate Per Wk. \$50.00	1½ @ \$50.00	Double @ \$50.00	Total Hrs. Worked
3-24-45	40	8	..	48
3-31-45	40	8	8	56
4- 7-45	40	8	..	48
4-14-45	40	8	..	48
4-28-45	40	8	8	56
5- 5-45	40	8	..	48
5-12-45	40	8	..	48
5-19-45	40	4½	..	44½
5-26-45	40	8	..	48
6-16-45	40	8	..	48
	800	156½	23	979½

Rate \$50.00 @ 1½ 156½ hrs. @ 1.875 ..... = \$292.43¾

Rate \$50.00 @ Double—23 hrs. @ 2.50 ..... = 57.50

\$349.93¾

Penalty ..... 349.93¾

\$699.87½

### SCHEDULE "B".

Howard S. Sweatt—#841—Safety Inspector.

Week Ending Date	Rate Per Wk. \$50.00	1½ @ \$50.00	Double @ \$50.00	Total Hrs. Worked
12-16-44	40	4½	..	41½
12-23-44	40	8	..	48
1- 6-45	40	8	..	48
1-13-45	40	8	..	48
1-27-45	40	8	..	48
2- 3-45	40	8	..	48
2-10-45	40	8	..	48
2-17-45	40	7½	..	47½

Week Ending Date	Rate Per Wk. \$50.00	1½ ● \$50.00	Double ● \$50.00	Total Hrs. Worked
2-24-45	40	8	..	48
3- 3-45	40	8	..	48
3-10-45	40	7½	..	47½
3-17-45	40	7½	..	47½
3-31-45	40	8	..	48
4- 7-45	40	8	..	48
4-14-45	40	8	..	48
4-21-45	40	8	..	48
5- 5-45	40	8	..	48
5-12-45	40	8	..	48
5-19-45	40	8	..	48
5-26-45	40	8	..	48
6- 2-45	40	8	..	48
6-30-45	40	4	..	44

880

167

1047

Rate \$50.00 @ 1½ 167 hrs. @ 1.875 ..... = \$313.12½

Penalty ..... 313.12½

\$626.25**SCHEDULE "C".****L. M. Williams—#491—Chief Shift Inspector-Process.**

Week Ending Date	Rate per Wk. \$50.00—\$55.00	1½ ● \$50.00—\$55.00	Double ● \$50.00—\$55.00	Total Hrs. Worked
8-19-44	40 ..	8 ..	.. ..	48
8-26-44	40 ..	8 ..	.. ..	48
9- 9-44	40 ..	8 ..	.. ..	48
9-16-44	40 ..	8 ..	.. ..	48
9-23-44	40 ..	8 ..	7½ ..	55½
9-30-44	40 ..	7½ ..	.. ..	47½
10- 7-44	40 ..	8 ..	.. ..	48
10-14-44	40 ..	8 ..	.. ..	48

Week Ending Date	Rate per Wk. \$60.00—\$65.00		1½ @ \$60.00—\$65.00		Double @ \$60.00—\$65.00		Total Hrs. Worked
10-21-44	40	..	8	..	..	..	48
10-28-44	40	..	8	..	8	..	56
11- 4-44	40	...	8	..	8	..	56
11-18-44	..	40	..	8	..	8	56
11-25-44	..	40	..	8	..	..	48
12- 2-44	..	40	..	7½	..	..	47½
12- 9-44	..	40	..	7	..	..	47
12-16-44	..	40	..	8	..	..	48
12-23-44	..	40	..	7½	..	..	47½
1- 6-45	..	40	..	8	..	..	48
1-20-45	..	40	..	8	..	..	48
1-27-45	..	40	..	4	..	..	44
2- 3-45	..	40	..	8	..	..	48
2-17-45	..	40	..	2	..	..	42
2-24-45	..	40	..	8	..	..	48
3- 3-45	..	40	..	8	..	8	56
3-10-45	..	40	..	8	..	..	48
3-17-45	..	40	..	8	..	..	48
3-24-45	..	40	..	8	..	..	48
4-12-45	..	40	..	3	..	..	43

440 680 87½ 119 23½ 16 1366

Rate \$60.00 @ 1½ 87½ hrs. @ 2.25..... = \$196.87½

Rate \$60.00 @ Double 23½ hrs. @ 3.00..... = 79.50

Rate \$65.00 @ 1½ 119 hrs. @ 2.43¾..... = 290.06¼

Rate \$65.00 @ Double 16 hrs. @ 3.25..... = 52.00

\$618.43¾

Penalty ..... 618.43¾

1,236.87½

Filed Aug. 23, 1945.

## SCHEDULE "D".

William S. Jones—#232—Classification B-2.

Week Ending Date	Rate per Wk.		1½		Double		Total Hrs. Worked
	\$75.00—\$80.00	\$80.00—\$85.00	\$75.00—\$80.00	\$80.00—\$85.00	\$75.00—\$80.00	\$80.00—\$85.00	
8- 5-44	40	..	8	..	4	..	52
8-12-44	40	..	8	..	4	..	52
9- 2-44	40	..	8	..	8	..	56
9-16-44	40	..	8	..	..	..	48
9-23-44	40	..	8	..	..	..	48
9-30-44	40	..	8	..	4	..	52
10- 7-44	40	..	8	..	..	..	48
10-14-44	40	..	8	..	..	..	48
10-21-44	40	..	8	..	..	..	48
10-28-44	40	..	8	..	4	..	52
11- 4-44	40	..	8	..	4	..	52
11-11-44	40	..	4	..	..	..	44
11-18-44	40	..	8	..	4	..	52
11-25-44	40	..	8	..	..	..	48
12- 9-44	40	..	8	..	..	..	48
12-16-44	..	40	..	8	..	..	48
12-23-44	..	40	..	8	..	..	48
1- 6-45	..	40	..	8	..	..	48
1-13-45	..	40	..	8	..	..	48
1-20-45	..	40	..	8	..	..	48
1-27-45	..	40	..	8	..	..	48
2- 3-45	..	40	..	8	..	3	51
2-10-45	..	40	..	8	..	..	48
2-17-45	..	40	..	8	..	..	48
2-24-45	..	40	..	8	..	4	52
3- 3-45	..	40	..	8	..	..	48
3-10-45	..	40	..	7	..	..	47
3-17-45	..	40	..	8	..	4	52
3-24-45	..	40	..	8	..	4	52
3-31-45	..	40	..	4	..	..	44

Week Ending Date	Rate per Wk. \$75.00—\$80.00	1½ @ \$75.00—\$80.00	Double @ \$75.00—\$80.00	Total Hrs. Worked
4-14-45	40	8	..	48
4-21-45	40	7	..	47
4-28-45	40	8	..	48
5- 5-45	40	8	..	48
5-12-45	40	8	..	48
5-19-45	40	8	..	48
5-26-45	40	8	..	48
6- 2-45	40	8	..	48
6- 9-45	40	8	..	48
6-23-45	40	8	..	48

600 1000 116 194 32 15- 1957

Rate \$75.00 @ 1½ 116 Hrs. @ 2.81¼..... = \$326.25  
 Rate \$75.00 @ Double 32 Hrs. @ 3.75..... = 120.00  
 Rate \$80.00 @ 1½ 194 Hrs. @ 3.00..... = 582.00  
 Rate \$80.00 @ Double 15 Hrs. @ 4.00..... = 60.00

\$1,088.25

Penalty ..... 1,088.25

\$2,176.50

Filed Aug. 23, 1945.

### SCHEDULE "E".

Harry Johnson—#371—"1944."

Week Ending Date	Rate Per Wk. \$65.00.	1½ @ \$65.00	Double @ \$65.00	Total Hrs. Worked
8-19-44	40	7	..	47
8-26-44	40	7	..	47
9- 2-44	40	8	..	48
9- 9-44	40	2	..	42
9-16-44	40	7	..	47

Week Ending Date	Rate Per Wk. \$65.00.	1½ ● \$65.00	Double ● \$65.00	Total Hrs. Worked
9-23-44	40	7	..	47
9-30-44	40	8	..	48
10- 7-44	40	4½	..	44½
10-14-44	40	7	..	47
10-21-44	40	4	..	44
10-28-44	40	8	..	48
11- 4-44	40	8	..	48
11-11-44	40	7	..	47
11-18-44	40	6	..	46
11-25-44	40	8	..	48
12- 2-44	40	8	..	48
12- 9-44	40	8	..	48
12-16-44	40	8	..	48
12-23-44	40	3½	..	43½
<hr/>				
	760	126	..	886

Rate \$65.00 @ 1½ 126 Hrs. @ 2.4375 ..... = \$307.125

Penalty ..... = 307.125

\$614.25

Filed Aug. 23, 1945.

### SCHEDULE "F".

Harry Johnson—#371—"1945"

Week Ending Date	Rate Per Wk. \$65.00.	1½ ● \$65.00	Double ● \$65.00	Total Hrs. Worked
1- 6-45	40	8	..	48
1-13-45	40	3½	..	43½
1-20-45	40	8	..	48
1-27-45	40	1½	..	41½
2- 3-45	40	1½	..	41½
2-10-45	40	8	..	48

154

Week Ending Date	Rate Per Wk. \$65.00	1 1/2 @ \$65.00	Double @ \$65.00	Total Hrs. Worked
2-17-45	40	8	..	48
2-24-45	40	8	..	48
3- 3-45	40	8	..	48
3-10-45	40	8	..	48
3-17-45	40	3 1/2	..	43 1/2
3-31-45	40	8	..	48
4- 7-45	40	8	..	48
4-21-45	40	8	..	48
4-28-45	40	8	..	48
5-12-45	40	8	..	48
5-19-45	40	8	..	48
6- 2-45	40	8	..	48
6- 9-45	40	8	..	48
6-16-45	40	8	..	48
6-30-45	40	8	..	48
7-14-45	40	8	..	48
880		154	..	1034

Rate \$65.00 @ 1 1/2 154 hrs. @ \$2.4375..... = \$375.375  
 Penalty ..... 375.375  
\$750.75

Year 1944 ..... \$307.125  
 Year 1945 ..... 375.375

682.50  
 682.50

\$1,265.00

Filed Aug. 23, 1945.

# SCHEDULE "G"

James E. Fitch—#826—Safety Inspector.

Week Ending Date	Rate Per Wk. \$50.00	1½ @ \$50.00	Double @ \$50.00	Total Hrs. Worked
12- 9-44	40	8	..	48
12-16-44	40	8	..	48
1-13-45	40	8	..	48
1-20-45	40	8	..	48
1-27-45	40	8	..	48
2-10-45	40	8	..	48
2-24-45	40	8	..	48
3- 3-45	40	8	..	48
3-17-45	40	8	..	48
3-24-45	40	8	..	48
4-21-45	40	8	..	48
6-16-45	40	8	..	48
6-23-45	40	8	..	48

520

104

624

Rate \$50.00 @ 1½ 104 Hrs. @ \$1.875 ..... = \$195.00

Penalty ..... 195.00

\$390.00

Filed Aug. 23, 1945.

14

## PLEA OF PRESCRIPTION.

(Titles Omitted.)

Silas Mason Company, defendant herein, shows:

1.

That this suit was filed August 23, 1945, and defendant, therefore, pleads the prescription of one year against

all claims asserted by complainants based on work performed prior to August 23, 1944.

Wherefore, defendant prays that its plea of prescription be sustained and complainants' demands be rejected as to all claims based on work performed prior to August 23, 1944.

Defendant further prays for all orders necessary, and for general and equitable relief.

COOK, CLARK & EGAN,  
By C. D. EGAN,  
Attorneys for Defendant.

(Certificate omitted.)

Filed May 17, 1945.

# MOTION FOR A MORE DEFINITE STATEMENT OF FACTS AND A BILL OF PARTICULARS.

15

(Titles Omitted.)

Defendant moves the Court for an order directing complainants to file a more definite statement of facts and a bill of particulars in the following matters:

1.

In Article 11 complainants allege that under the rules and regulations of the Department of Labor, of the Administrator of the Fair Labor Standards Act and under

the wage classifications and wage scales duly promulgated for the defendants company, they are entitled to compensation for hours in excess of 40 per week at time and one-half and to double time for work performed on Sundays and Holidays.

2.

That complainants should be ordered to amend and specify the rules and regulations, wage classifications and wage scales to which they refer in Article II of their complaint.

The ground for this motion is that the above matters are not averred with sufficient definiteness or particularity to enable defendant to properly prepare its answer, in that the defendant is unfamiliar with the existence of any rules, regulations, wage classifications, or wage scales of the type referred to in Article 11 of the complaint and is entitled to know upon what rules, regulations, wage classifications and wage scales complainants rely.

Wherefore, defendant prays that this motion for a more definite statement of facts and a bill of particulars be sustained and complainants ordered to amend their complaint in the respects hereinabove set forth.

Defendant further prays for all orders necessary, and for general and equitable relief in the premises.

COOK, CLARK & EGAN,

By C. D. EGAN,

Attorneys for Defendant.

1500 Commercial Bank Building,  
Shreveport, Louisiana.

Filed May 17, 1946.

## 17. MOTION FOR SUMMARY JUDGMENT.

(Titles Omitted.)

Defendant moves the Court as follows:

1.

That it enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in defendant's favor dismissing the action, for the reason and on the ground that defendant is entitled to a judgment as a matter of law.

2.

That this motion is based upon the affidavit of R. L. Telford, Vice-President of defendant, which is hereto attached and herein incorporated, in support of this motion, and which states facts showing that as a matter of law neither complainants nor defendant were covered by the Fair Labor Standards Act, and that complainants are not entitled to recover all or any part of the amount sued for, under that or any other Act of Congress, in that during the period of complainants' asserted claims neither complainants nor defendant were engaged in commerce, or in the production of goods for commerce.

3.

That this motion is based upon the further proposition that the Walsh-Healey Act is inapplicable to complainants, that the Walsh-Healey Act confers upon complainants no cause or right of action against defendants; and that this Court is without jurisdiction over claims under the Walsh-Healey Act.

Wherefore, defendant prays that this motion be sustained, and that there be summary judgment in favor of defendant, and against complainants dismissing the suit of complainants at their costs.

Defendant further prays for all orders necessary, and for general and equitable relief.

COOK, CLARK & EGAN,

By C. D. EGAN,

Attorneys for defendant.

Filed June 10, 1946.

State of Louisiana,  
Parish of Caddo.

Before Me, the undersigned authority, came and appeared R. L. Telford, who, being duly sworn, deposed and said:

That he has personal knowledge of all the facts recited in this affidavit.

That Silas Mason Company constructed and later operated the Louisiana Ordnance Plant under the terms of a contract with the United States of America, a copy of which is filed in the proceeding hereinafter mentioned.

That construction of the Plant under the terms of the said contract began on or about the 7th day of July, 1941, and that operation of the Plant began on or about the 4th day of March, 1942.

That deponent has been connected with the Silas Mason Company in an official capacity from a time long prior to the execution of the contract, above referred to, to the present time; that he was General Manager of

the work performed by the Company under the said contract from the beginning of the construction to the 9th day of June, 1943; and was both General Manager as above stated, and Vice-President of the Silas Mason Company thereafter until a time subsequent to August 23, 1945, the date of the filing of Civil Action No. 1594 on the docket of the United States District Court for the Western District of Louisiana, Shreveport Division, entitled "Harris Kennedy, et al., vs. Silas Mason Company".

That at all times involved in the complaint of complainants in the proceeding just above mentioned, the premises upon which complainants were employed, the tools and equipment which they were using in their employment, and the property and products with which they dealt in such employment, were all the property of, and belonged to, the United States Government; that the component parts of the shells, grenades, mines, fuses, bombs, and other products with which all of the complainants dealt were shipped to the Louisiana Ordnance Plant as property of the Government and the finished product, as property of the Government, was, by its direction, shipped out of the said premises for use by its Armed Forces in its War effort in the War with Germany, Japan, Italy, and other Nations; that at all times involved in the proceeding above mentioned, Silas Mason Company was operating the Louisiana Ordnance Plant, Shreveport, Louisiana, under the contract above mentioned, which is a cost-plus-a-fixed-fee contract with the United States Government, and under which contract the United States Government obligated itself to pay the Silas Mason Company a fixed fee for operating the said Plant, plus all expenses in connection with the operation thereof.

That there were no rules, regulations, wage scales, or wage classifications promulgated for Silas Mason Company requiring that complainants in the above numbered proceeding be compensated for all hours in excess of 40 at time and one-half and at double time for all work performed on Sundays and Holidays; and there was no custom of Silas Mason Company involving or requiring such compensation to complainants, or persons similarly situated.

R. L. TELFORD.

Sworn to and subscribed before me, on this the 10th day of June, 1946.

C. D. EGAN,  
Notary Public.

Filed June 10, 1946.

21

CONTRACT No. W-ORD-517.

DA-W-ORD-4.

Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction and Operation Contract.

War Department.

Contractor: Silas Mason Company, New York, N. Y.

Contract for: Architect-engineer services, construction of a new ordnance facility and installation of equipment therein, procuring production equipment, and options for

aining key personnel for and operating a new ordnance facility for the loading of fixed rounds, shells, bombs, fuzes and boosters.

Place: At or near Minden, La.

Estimated Cost of designing, engineering and construction under Title I: \$15,776,944.

Fixed-Fee for designing, engineering and constructing under Title I: \$421,764.

Estimated Cost of procuring equipment under Title II: \$3,138,200.

Fixed-Fee for procuring equipment under Title II: \$20,000.

Estimated Cost of Training Key Personnel under Title III (Optional): \$150,000.

Fixed-Fee for Training Key Personnel under Title III: \$1.00.

Estimated Cost of operation under Title IV (Optional): \$25,100,000.

Fixed-Fee for operation under Title IV: \$420,000.

Payments to be made by Finance Officer, U. S. Army at New Orleans, La.

The new ordnance facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the fol-

lowing procurement authorities, the available balances of which are sufficient to cover the cost of the same:

ORD 9762 P99 A0141-02.

ORD 9763 P99 A0141-02.

ORD 50,179 P510-31 A0025-13.

ORD 50,180 P531-32 A0025-13.

This contract is authorized by the following laws: The Act of July 2, 1940 (Public No. 703, 76th Congress), the Act of March 1, 1941 (Public No. 11, 77th Congress), and the Act of June 30, 1941 (Public No. 139, 77th Congress).

(Sgd.) L. H. CAMPBELL, JR.,

(L. H. Campbell, Jr.)

Brig. Gen., U. S. Army.

(Page 22 placed in index.)

(Page 23 placed in index.)

**Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction And Operation Contract.**

This Contract, entered into this 3rd day of July, 1941 by The United States of America, hereinafter called the Government, represented by the Contracting Officers executing this contract, and Silas Mason Company, a corporation organized and existing under the laws of the

State of Delaware; of the City of New York in the State of New York hereinafter called the Contractor, witnesseth that:

Whereas, The Government desires to have the Contractor design, construct and equip, and at the option of the Government, train key personnel, prepare to operate a new ordnance facility more particularly described in Title I hereof, for the loading of fixed rounds, shells, bombs, fuzes and boosters; and

Whereas, The accomplishment of the above-described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, As a result of such negotiations, the Secretary of War has directed that the Government enter into a cost-plus-a-fixed-fee contract with the Contractor for the accomplishment of the above-described work;

Now, Therefore, The parties hereto do mutually agree as follows:

## Title I.

### Design, Engineering and Construction.

#### Article 1-A—Description of New Ordnance Facility.

1. The new ordnance facility, hereinafter referred to as the "Plant," and designated as Louisiana Ordnance Plant, shall comprise a plant at or near Minden, La., upon a site to be furnished and made available by the Government, for the loading of fixed rounds, shells,

bombs, boosters and fuzes (hereinafter sometimes referred to as "Ammunition") including manufacture of amatol and of nitrate of ammonia from neutral nitrate of ammonia solution for the foregoing types of Ammunition, having an estimated daily capacity based on a twenty-four (24) hour day as follows:

(a) 96,000 Fixed Rounds 20mm. or equivalent, complete except for detonators;

(b) 8,400 Rounds 155mm. Shell, or equivalent, but without any other components.

(c) 2,880—100-lb. Bombs or equivalent together with auxiliary boosters only.

2. Said Plant shall consist of loading buildings, nitrate of ammonia evaporating and graining buildings, administration buildings, shops, railroads, roads, steam lines, air lines, electric lines, telephone lines, fencing, lighting, power house, dormitories, water and sewer systems, staff dwellings, mess hall, cafeterias, guard quarters, fire fighting equipment and housing thereof, and other buildings and equipment necessary or appropriate for a loading plant of the approximate capacity aforesaid, with storage buildings adequate for about 30 days' supply of incoming materials and about 60 days production of finished product.

3. Said Plant shall conform, insofar as is practicable, with typical designs, drawings, specifications, details, standards or instructions contained in Appendix "A" hereto attached and made a part hereof, which are on file in the offices of the Chief of Ordnance and The Quartermaster General and which shall be promptly furnished to the Contractor, or which will be furnished hereafter

by the Contracting Officer; *Provided, however*, that no portion of said Plant shall consist of a permanent type of construction unless specifically authorized in advance by the Secretary of War; and *Provided further*, that nothing herein shall prevent the use of a type of construction sufficiently substantial for the use intended, in the judgment of the Contracting Officer, as evidenced by his approval of the plans and specifications.

#### Article I-B—Statement of Work.

1. The Contractor shall, in the shortest reasonable time, furnish the labor, materials, tools, machinery, equipment, facilities, utilities, supplies not furnished by the Government, and services, and do all things necessary for the completion of the following work:

a. The construction of and the installation of equipment in the Plant described in Article I-A hereof, in accordance with the approved plans and specifications provided hereinafter.

b. The furnishing of all architectural and engineering services covering the design, preparation of drawings, plans and specifications, and field engineering and supervision necessary for the efficient execution and coordination of the construction and installation of equipment of said Plant as provided for hereunder, which services together with other provisions pertaining thereto are more particularly described and hereinafter set forth in Article I-E.

2. Supervision, direction and control of performance provided for in Article I-B shall be as follows:

a. The Contracting Officer appointed by the Chief of Ordnance will supervise the preparation of the general

layout of the project and the detailed plans and working drawings for the operating buildings and their equipment, including process steam generating plant and explosive storage buildings.

b. The Contracting Officer appointed by The Quartermaster General will supervise the preparation of the detailed plans and working drawings for roads, railroads, sewerage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance. All designs must have the concurrence of the Contracting Officer appointed by the Chief of Ordnance.

c. Performance of the construction work of the entire project will be under the supervision of the Contracting Officer appointed by The Quartermaster General.

#### Article I-C—Estimates.

1. It is estimated that the total cost of the work under this Title I will be approximately Fifteen Million Seven Hundred Seventy-Six Thousand Nine Hundred Forty-Four Dollars (\$15,776,944.00), excluding the Contractor's fee and the procurement of production equipment provided for in Title II hereof.

2. It is estimated that the completed Plant will be ready for utilization by the Government within nine (9) months after the approval date of this contract.

3. It is expressly understood that the Contractor does not guarantee the correctness of any of the estimates set forth in this Article I-C. The estimated total costs set

forth in this Article I-C are based upon the data now available and agreed to by both the Government and the Contractor, copies of which are on file in the offices of the Chief of Ordnance and The Quartermaster General.

#### Article I-D—Consideration.

1. As consideration for its undertaking under this Title I the Contractor shall receive the following:

a. Reimbursement for expenditures as provided in Title V.

b. Rental for Contractor's equipment as provided in Title V.

c. A fixed-fee in the amount of Four Hundred Twenty-One Thousand Seven Hundred Sixty-Four Dollars (\$421,764.00) which shall constitute complete compensation for the Constructor's services, including profit and all general overhead expenses.

2. The Contractor's fixed fee stipulated herein is based upon the understanding that the Contractor will subcontract portions of the work under this contract as follows (if none, so indicate):

Item	Kind of Work
1. Normal Mechanical Items.	
2. Heating and ventilating.	
3. Plumbing.	
4. Electric Wiring.	

If work of categories other than or in addition to those mentioned above is sublet, or if work included in any of the above categories is performed by the Contractor's own force, all with the written approval of the Contracting Officer, the fixed-fee of the Contractor shall be decreased or increased accordingly, by an equitable adjustment on the basis of the decrease or increase of services made necessary by such changes.

**Article I-E—Character and Extent of Architectural and Engineering Services.**

1. The Contractor shall, in the shortest reasonable time, perform the following services:

a. Make all necessary topographical and other surveys and maps; arrange for and supervise necessary test borings and other subsurface investigations.

b. Prepare layout plan of the proposed project and obtain approval thereof.

c. Prepare preliminary studies, sketches, and reports for all structures, utilities and appurtenances.

d. Adapt Government designs, drawings, specifications and standards for buildings and other structures as necessary to meet the requirements of the approved layout of the proposed project, and prepare detailed designs, specifications and drawings in required form for which Government designs are incomplete or unavailable.

e. Obtain necessary permits and approvals from all local, State and Federal authorities. Should it become necessary in the performance of the work and services

for the Contractor to secure the right of ingress or egress to perform any of the work required by this Title I hereof on properties not owned or controlled by the Government, the Contractor shall, if practicable, secure the consent of the owner, his representative, or agent, prior to effecting entry on such property. In the event the owner requires the payment of any fee for a license to enter upon and/or use such property, the Contractor when so directed by the Contracting Officer, shall pay such fee and obtain a receipt therefor.

f. Prepare estimates of the material quantities involved in the proposed project.

g. When preliminary drawings are approved by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise the drawings and specifications as required by the Contracting Officer. Drawings shall be prepared for permanent record, inked in on linen or as otherwise directed by the Contracting Officer, but in no case will these drawings be prepared in pencil or on paper; the specifications shall be mimeographed to produce the number of copies required by the Contracting Officer. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the advertising, negotiating, awarding of contract, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

h. Prepare an estimate of the cost of the proposed project based on the approved designs, drawings and specifications therefor.

i. Assist the Contracting Officer in obtaining, analyzing and evaluating proposals or bids for a construction contract or contracts based upon the approved drawings and specifications.

j. Prepare record drawings in required form, or correct drawings and specifications to show construction as actually accomplished; assist in preparation of the completion report for the project; and furnish for the approval of the Contracting Officer:

(1) Schedules and charts showing the sequence of operations in the construction of each of the several portions of the work,

(2) Estimates showing the amounts of critical and important materials and dates when such materials will be required on the site.

(3) Labor estimates showing the approximate number, trades and dates required to meet the schedule in (1) above,

(4) In addition to the requirements of Paragraph "i" of this Section 1 of Article I-E, periodical progress reports as required by the Contracting Officer showing the progress of the work and any deviation from the schedule in (1) above.

k. Establish a permanently monumented base line, all governing lines, bench marks and grades, tied into the North American Datum unless specifically exempted by written instructions of the Contracting Officer.

l. Supervise the work included in this Title I to insure the construction of every part of the work in ac-

cordance with the approved drawings and specifications referred to in Paragraph "d" of this Section 1 of Article I-2, and within the areas and boundaries designated for the project.

m. Check and approve all shop and work drawings submitted in connection with the construction work to assure that they conform with approved drawings.

n. Make such field and laboratory tests of concrete and concrete aggregates and all other materials at the site or at any time or place as the Contracting Officer may require. Inspect and report to the Contracting Officer in writing as to the conformity or non-conformity of the workmanship and materials to specifications; and on the progress of the project.

o. Upon termination or completion of this contract, as determined by the Contracting Officer, and before final payment of the fixed-fee, the Contractor shall correct all permanent tracings to the satisfaction of the Contracting Officer to show all changes in the actual construction from the original drawings.

p. Without additional compensation the Contractor, or any member of the organization, when requested, shall consult and advise with the Contracting Officer on any questions which may arise in connection with the work.

q. Perform all other architectural and engineering services within the scope of this contract, required by the Contracting Officer.

r. The Contractor shall promptly, after the execution of the contract, prepare and submit to the Contracting Officer, for approval, a schedule showing the order in

which the Contractor proposes to carry on the work, with dates on which he will start the several salient features of the work and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart at suitable scale so as to indicate with symbols the percentage completed at any time. The Contractor shall correct the progress schedule at the end of each week and shall immediately deliver to the Contracting Officer three copies of the same.

s. The Contractor shall furnish sufficient technical supervisory and administrative personnel to insure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may direct him to increase working days per week, or hours of labor per day and failure to comply with such directions shall be deemed sufficient cause to terminate the contract.

t. When in the opinion of the Contracting Officer the Contractor's personnel and/or overhead is excessive for the proper performance of this contract, reductions thereof shall be made as required by the Contracting Officer.

2. The Government shall furnish the Contractor such available schedules of preliminary data, layout sketches, and other available information respecting sites, topography, soil conditions, outside utilities and equipment, and shall make available to the Contractor such Government designs, drawings, specifications, details, standards and safety practices as are on hand in the office of the Chief of Ordnance and The Quartermaster General and are applicable to the design, construction, and equipping of the said Plant.

3. All of the Contractor's notes and other data concerning the design, construction and equipping of the Plant shall become the property of the Government and the Government shall have full right to use said notes and other data for any purpose it may desire, without any such claim on the part of the Contractor for additional compensation. All such notes and other data shall be delivered to the Government whenever requested by the Contracting Officer and, further, access to such notes and data shall be restricted to trusted and duly authorized representatives of the Government and of the Contractor.

4. Expert Technical Assistance. When in the judgment of the Contractor the complexity and nature of the project are such as to require expert technical assistance, or services, or advice in connection with special phases of the work such as site planning, manufacturing processes, or other problems of a highly technical character, the Contractor may employ directly or by a service contract with the consent and approval of the Contracting Officer, such supplemental professional services as are necessary for the proper design and execution of the project.

#### Article I-F—Rates of Wages—Non Rebate.

1. In accordance with the act of August 30, 1935 (49 Stat. 1011; 40 U. S. C. 276a and 276a 1), the following provisions shall apply to the work under this Title I:

a. The Contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at the time of

payment, computed at wage rates not less than those established by the Secretary of Labor for the work herein specified, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of the work. The Contracting Officer shall have the right to withhold from the Contractor so much of accrued payments as may be considered necessary by the Contracting Officer to pay to laborers and mechanics employed by the Contractor or any subcontractors on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors, or their agents.

b. In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise and the Contractor shall be liable to the Government for any excess costs occasioned the Government thereby.

2. The following provisions shall apply to the work under this Title I:

a. Should the Contractor or any subcontractor pay to any laborer or mechanic a wage based upon a rate

in excess of the wage rate for the classification in which said laborer or mechanic is included as established for the work by the Secretary of Labor, such increased wage shall be at the expense of the Contractor and shall not be reimbursed by the United States. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the Contractor's pay rolls, prior to reimbursement as contemplated in Section 1 of Article I-D hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates, established for such laborers and/or mechanics, the reimbursement made to the Contractor on account of such pay rolls will not include such excess payments. The provisions of this Section shall not apply when wage rates for a particular classification greater than those prescribed by the Secretary of Labor have been approved in writing by the Contracting Officer.

b. The Contractor shall furnish to the Government representative in charge at the site of the work covered by this contract, or if no Government representative is in charge at the site, shall mail to the Federal agency contracting for the work, within 7 days after the regular payment date of each and every weekly pay roll, an affidavit in the form prescribed by regulations issued by the Secretary of Labor and published in the Federal Register of March 1, 1941, 6 F. R. 1211, or any modification thereof pursuant to the act of June 13, 1934, 48 Stat. 948 (U. S. Code title 40, sections 276 b. and c.), sworn to by the Contractor or the subcontractor concerned or by the authorized officer or employee of the Contractor or subcontractor supervising such payment, to the effect that each and every person employed on the work has been paid in full the weekly wages shown on the pay roll covered by the affidavit; that no rebates

have been or will be made either directly or indirectly to or on behalf of the Contractor or such subcontractor from the full weekly wages earned as set out on such pay roll; and that no deductions, other than permissible deductions, as defined in the said regulations pursuant to said act of June 13, 1934, and as described in said affidavit, have been or will be made, either directly or indirectly, from the full weekly wages earned as set out on such pay roll.

The Contractor shall comply with all applicable requirements of the said regulations of the Secretary of Labor under the act of June 13, 1934, and the requirements of this Paragraph of the contract shall be subject to all applicable provisions of such regulations.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to insure fulfillment of the requirements of this Paragraph.

#### Article I-G—Eight-Hour Law—Overtime Compensation.

No laborer or mechanic doing any part of the work contemplated by this Title I, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Article. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this Title I shall be computed on a basic rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition, that

every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this Article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this Article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of Section 5 (b) of Public Act No. 671, 76th Congress, approved June 28, 1940, and Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime.

## Title II.

### Procurement of Production Equipment.

#### Article II-A—Statement of Work.

1. The Contractor shall, in the shortest reasonable time, determine the production equipment requirements for the Plant and shall, subject to the approval of the Contracting Officer, thereupon proceed to do all things necessary and incident to the procurement of the production equipment requirement.

2. The Government reserves the right to furnish any production equipment necessary for the equipping of the Plant, provided such production equipment so to be fur-

nished is of a suitable type and in satisfactory operating condition, upon so notifying the Contractor prior to any commitment by the latter therefor. In the equipping of the Plant the Contractor shall be free (but shall not be obligated) to use any production equipment of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such production equipment will be supplied, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 6 of Article V-A of Title V. In the event the Government is able to obtain production equipment of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such equipment.

#### Article II-B—Estimates.

It is estimated that the total cost under this Title II will be approximately Three Million One Hundred Thirty-eight Thousand Two Hundred Dollars (\$3,138,200.00), exclusive of the Contractor's fee. It is expressly understood, however, that the Contractor does not guarantee the correctness of this estimate. The estimated total cost set forth in this Article II-B is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the office of the Chief of Ordnance.

#### Article II-C—Consideration.

As consideration for its undertaking under this Title II the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.

2. A fixed-fee in the amount of Twenty Thousand Dollars (\$20,000.00), determined by negotiations between the Contractor and the Chief of Ordnance, which shall constitute complete compensation for the Contractor's services, including profit other than that included in the prices quoted pursuant to Section 2 of Article II-A of this Title II.

Article II-D—Eight Hour Law—Overtime Compensation.

The provisions of Article I-G of Title I shall apply to the work under this Title II.

### Title III.

#### Training of Key Personnel (Optional).

Article III-A—Statement of Work.

1. The obligation of the Contractor to proceed with the work under this Title III shall be conditioned upon receipt by the Contractor of notice in writing from the Contracting Officer so to do, and the prior appropriation and allocation of funds necessary therefor. Upon receipt by the Contractor of such notice, the Contractor shall hire or select the key personnel necessary for the operation of the Plant, and when such personnel is available shall proceed to train such personnel in the duties and functions of their respective positions, at the Con-

tractor's plants or elsewhere, in order that they will have obtained experience with the processes and operations involved in the Plant at any time when the Government shall exercise its option under Section 1 of Article IV-A of Title IV.

2. After completion of the work under Section 1 of this Article III-A, the Contractor shall, if directed by the Contracting Officer, until a date not in excess of twelve (12) months after the approval of this contract, hold the group of key personnel trained hereunder in readiness for operation of the Plant should the Government exercise its option under Section 1 of Article IV-A of Title IV.

3. The extent and character of the work to be done by the Contractor under this Title III shall be subject to the approval of Contracting Officer to whom the Contractor shall report and be responsible. In the event that there should be any dispute with regard to the extent and character of the work to be done the matter shall be determined as provided in Article VII-N of Title VII.

#### **Article III-B—Estimate.**

It is estimated that the cost of the work under this Title III will be approximately One Hundred Fifty Thousand Dollars (\$150,000.00), exclusive of the Contractor's fee. It is expressly understood that the Contractor does not guarantee the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

**Article III-C—Consideration.**

As consideration for its undertaking under this Title III the Contractor shall receive the following:

1. Reimbursement for expenditures as provided in Title V.
2. A fixed-fee of One Dollar (\$1.00) which shall constitute complete compensation for the Contractor's services under this Title III, including profit.

**Article III-D—Eight Hour Law—Overtime Compensation.**

The provisions of Article I-G of Title I shall apply to the work under this Title III.

**Title IV.****Operation of Plant (Optional).****Article IV-A—Statement of Work.**

1. The obligation of the Contractor to proceed with the work under this Title IV shall be conditioned upon receipt by the Contractor of the notice provided for in Section 1. of Article III-A of Title III hereof and receipt by the Contractor within twelve (12) months after the date of approval of this contract of notice in writing from the Contracting Officer so to do, and the prior appropriation and allocation of funds necessary therefor. Immediately upon receipt by the Contractor of such notice, and concurrently with the performance of the work required of it under Titles I, II and III hereof, the Contractor shall undertake all preparations necessary for the subsequent operation of the Plant, including the necessary training of personnel for such operation in addi-

tion to the key personnel trained pursuant to Title III hereof, and all other services incident to setting up an efficient and going operating force.

2. As each operating unit of the Plant is completed and ready for operation and the necessary preparation for operation and training of personnel has proceeded to a point where operation is practicable the Contractor shall proceed to operate it as directed from time to time by the Contracting Officer, irrespective of whether or not the construction and equipping of the Plant as a whole shall have been completed.

3. Notwithstanding the fact that the construction and equipping of the Plant as a whole shall not have been completed, when all operating units thereof are completed and ready for operation without incurring hazards because of the lack of completion of the construction and equipping of the Plant as a whole beyond those usual in the normal operation of a plant of the type provided for herein, the Contractor shall so notify the Contracting Officer in writing, and from and after the date of said notice the Contractor shall operate said Plant for a period of twelve (12) months.

4. Upon written notice to the Contractor not less than ninety (90) days before the anticipated completion of the operation provided for in Section 3 next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months and the Contractor shall undertake such continued operation under the terms and condition of this contract applicable to the operation of the Plant (including those relating to the Fixed-fee for such additional operation, which fee shall be that provided in Section 3 of Article IV-C, hereof). Further continued

operation, if any, of said Plant by the Contractor after said additional operation shall be subject to mutual agreement.

5. The work under this Title IV shall be performed in accordance with the current applicable specifications which will be furnished by the Contract Officer.

6. The Government shall furnish all explosives, including neutral nitrate of ammonia solution for the manufacture of nitrate of ammonia, and all metal parts for the loading of the Ammunition, including shipping materials and containers when and as requisitioned from time to time by the Contractor, to be delivered when required, f. o. b. said Plant, in sufficient quantities to enable the Contractor to carry on the operation of the Plant provided for in this Title IV. The Contractor shall be under no obligation to accept or store or permit to be stored at said Plant any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what is usual in the normal operation of a plant of the type provided for herein.

7. In carrying out the work under this Title IV the Contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or

other carriers in accordance with the Government's shipping instructions.

8. In providing materials and supplies as provided in Section 7, next above, the Contractor shall be free (but shall not be obligated) to use any materials or supplies of its own manufacture, upon advising the Government in advance as to the prices at which and the conditions upon which such materials and supplies will be provided, which prices and conditions, however, shall not be less favorable than those quoted to third parties for similar quantities and deliveries, and may be quoted without regard to the provisions of Section 6 of Article V-A of Title V. In the event the Government is able to obtain materials or supplies of equal quality and quantity at a lower price or on more favorable conditions from any responsible competitive source or from its own manufacture, it may undertake to do so upon so informing the Contractor within ten (10) days after being advised of the Contractor's price for such material and supplies.

9. The Contractor shall maintain a satisfactory system of inspection, gage and gaging checking concurrent with operations, and no ordnance materiel shall be submitted for the Government inspector's approval which has not previously been inspected by agents of the Contractor and found to be up to the contract standard.

#### Article IV-B—Estimates.

It is estimated that the cost of the work under this Title IV will be Twenty-five Million One Hundred Thousand Dollars (\$25,100,000.00), exclusive of the cost of continued operation covered by the option therefor provided in Section 4 of Article IV-A hereof, and exclusive of the Contractor's fee. It is expressly understood that

the Contractor does not guarantee the correctness of this estimate. The estimated total cost set forth above is based upon an estimate agreed to by both the Government and the Contractor, a copy of which is on file in the Office of the Chief of Ordnance.

#### Article IV-C—Consideration.

As consideration for its undertaking under this Title IV the Contract shall receive the following:

1. Reimbursement for expenditures as provided in Title V hereof.

2. A fixed-fee for operation provided in Section 3 of Article IV-A hereof, as follows: Four Hundred Twenty Thousand Dollars (\$420,000.00) for twelve (12) months operation, which fee shall constitute complete compensation (except for continued operation) for Contractor's services, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

3. A fixed-fee for continued operation provided in Section 4 of Article IV-A hereof, as follows: Four Hundred Twenty Thousand Dollars (\$420,000.00) for twelve (12) months operation, which fee shall constitute complete compensation for Contractor's services during continued operation, including profit, other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

#### Article IV-D—Walsh-Healey Act.

1. The following representations and stipulations pursuant to the Walsh-Healey Public Contracts Act (Act of

June 30, 1936; 49 Stat. 2036; 41 USC 35-45), shall apply to the operation of the Plant under this Title IV of this contract:

a. The Contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

b. All persons employed by the Contractor in the manufacture or furnishing of all materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles or equipment are to be manufactured or furnished under the contract; provided, however, that this stipulation with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

c. No person employed by the Contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of 8 hours in any 1 day or in excess of 40 hours in any 1 week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor.

d. No male person under 16 years of age and no female person under 18 years of age and no convict labor will be employed by the Contractor in the manufacture

or production or furnishing of any of the materials, supplies, articles, or equipment included in the contract.

e. No part of the contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in the plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract. Compliance with the safety, sanitary, and factory inspection laws of the state in which the work or part thereof is to be performed shall be prima facie evidence of compliance with this paragraph.

f. Any breach or violation of any of the foregoing representations and stipulations shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of the contract, in the sum of \$10 per day for each male person under 16 years of age or each female person under 18 years of age, or each convict laborer knowingly employed in the performance of the contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of the contract; and, in addition, the agency of the United States entering into the contract shall have the right to cancel the same and to make open market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of the contract as set forth herein may be withheld from any amounts due on the contract or may be recovered in a suit brought in the

name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered; Provided, That no claims by employees for such payments shall be entertained unless made within 1 year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the United States of America.

g. The Contractor shall post a copy of the stipulations in a prominent and readily accessible place at the site of the contract work and shall keep such employment records as are required in the Regulations under the Act available for inspection by authorized representatives of the Secretary of Labor.

h. The foregoing stipulations shall be deemed inoperative if this contract is for a definite amount not in excess of \$10,000.00

2. Paragraph b of Section 1 of this Article IV-D with respect to wages is inoperative due to lack of determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved.

#### Article IV-E—Neutrality Act.

Subsection 12 (g) of the Joint Resolution approved by the President, November 4, 1939, provides:

"No purchase of arms, ammunition, or implements of war shall be made on behalf of the United States by any

officer, executive department, or independent establishment of the Government from any person who shall have failed to register under the provisions of this joint resolution."

A copy of the Contractor's Certificate of Registration shall be filed in the Office of the Chief of Ordnance.

## **Title V.**

### **Cost of the Work and Payment Therefor.**

#### **Article V-A—Reimbursement for Contractor's Expenditures.**

1. The Contractor shall be reimbursed in the manner hereinafter described for such of its actual expenditures in the performance of the work under this contract, as may be approved or ratified by the Contracting Officer, and as are included in the following items:

a. All labor, materials, tools, machinery, equipment, facilities, supplies, utilities and services necessary for either temporary or permanent use for the benefit of the work, including the training of operating personnel. Unless otherwise directed in writing by the Contracting Officer, all articles of machinery or equipment valued at \$300 or less shall be classed as tools and shall be charged directly to the work.

b. All subcontracts made in accordance with the provisions of this contract.

c. Transportation, loading, unloading and storage charges on materials, supplies, and equipment.

d. Transportation and traveling expenses to and from the site of the Plant of the necessary field forces for the economical and successful prosecution of the work; transportation and traveling expense of such other employees of the Contractor whose full time is devoted to the work under this Contract as is actually incurred in connection with such work; and costs and expenses reimbursed to permanent employees of the Contractor transferred to or from the Plant on account of transportation of themselves, their families and their household goods.

Reimbursement for transportation and traveling expenses will be limited to the cost of transportation including Pullman where necessary and an allowance of Six Dollars (\$6.00) per day in lieu of all other expenses. Transportation by automobile in such required travel shall be reimbursed at the rate of Five Cents (\$.05) per mile as representing the actual cost of such transportation.

All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor, or any representative thereof, remain in a travel status in excess of six (6) days at any one time, not including the time consumed in travel, the cost for such excess travel status shall be at the expense of the Contractor, unless otherwise ordered in writing by the Contracting Officer.

e. Expenses of producing labor and expediting the production and transportation of material supplies and equipment.

f. Salaries of employees of the Contractor engaged directly on the work provided hereunder whether at the Plant or employed full time at the Contractor's offices.

In case the full time of any employee of the Contractor at the Plant is not applied to the work, his salary shall be included in this item in proportion to the actual time applied thereto. No person shall be assigned to service by the Contractor as superintendent of construction or operation, chief engineer, chief purchasing agent, chief accountant, or similar position in the Contractor's organization at the Plant, or as principal assistant to any such person until there has been submitted to and approved by the Contracting Officer a statement of the previous salary, proposed salary, qualifications, and experience of the person selected for such assignment. The regular salary or compensation rate of any such person shall not be in excess of the highest salary or compensation rate received by him during the year preceding the date of this contract plus such increase as the Contracting Officer may approve. The payment of any excess salary over such scheduled amounts shown in the approved salary schedule agreed to at the time and as shown in the record of negotiations for this contract shall not be reimbursable, unless and until the Chief of the Supply Arm or Service has so approved in writing.

g. Necessary temporary buildings and the equipment therefor and the cost of maintenance and operation thereof; provided, however, that the costs and expenses of equipment and operating cafeterias and commissaries shall be reimbursed only as provided in the procedure relating thereto approved by the Contracting Officer.

h. Premiums on such bonds and insurance policies as the Contracting Officer may approve or require as reasonably necessary for the protection of the Government or the Contractor.

i. Losses and expenses, not compensated by insurance or otherwise (including settlements made with the written consent of the Contracting Officer), actually sustained by the Contractor in connection with the work and found and certified by the Contracting Officer to be just and reasonable unless reimbursement therefor is expressly prohibited.

j. The cost of reconstructing and replacing any of the work destroyed or damaged, and not covered by insurance, but expenditures under this item must have the written authorization of the Contracting Officer in advance.

k. Payments made by the Contractor under the Social Security Act (employer's contribution) and any disbursements required by law which the Contractor may be required on account of this contract to pay on or for any plant, equipment, process, organization, materials, supplies, or personnel; and, if approved in writing by the Contracting Officer in advance, permit and license fees and royalties on patents used including those owned by the Contractor.

l. While the Contractor shall make every reasonable effort to have the finished product conform to the drawings and specifications referred to in Title IV hereof, it is recognized that variances therefrom are unavoidable and the Contractor shall be allowed all costs determined in accordance with this Article for re-working material because of rejection and for material finally rejected.

m. In connection with the work under Title IV only, extra compensation to employees, discontinuance wages and charges under welfare and other employee relations plans maintained by the Contractor; Provided that the

Government shall be chargeable therefor only insofar as the same are consistent with the general employee relations policies existing throughout the Contractor's organization, or are incurred pursuant to agreement made as a result of collective bargaining with the representatives of employees, and are expressly authorized in writing by the Contracting Officer.

n. Accounting (including salaries and other expenses) in connection with special audits of accounts for the government in connection with work hereunder.

o. Expenses in connection with any temporary or permanent closing down of the plant.

p. 1. The fixed amount of One Thousand Dollars (\$1,000.00) per month for each calendar month, of operation, payable at the close thereof, subsequent to the commencement of the complete operation provided in Section 3 of Article IV-A of Title IV (including continued operation under Section 4 of such Article IV-A), as complete compensation, including all general overhead, for all services performed by the Contractor at its New York, N. Y., offices in connection with the work under Title IV hereof, except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Title IV. The initial amount shall be payable at the close of the calendar month during which such operation commences.

2. For the purposes of this paragraph p, the term "full time" shall be deemed to refer to the time of employment of those employees engaged solely upon the work under this contract and who are carried on payrolls separate from the Contractor's payrolls relating to

its other business and not to employees of the Contractor engaged part time of the work under this Contract and part time on the Contractor's other business.

q. Disbursements incident to payment of payrolls, including but not limited to, the cost of disbursing cash, necessary guards, cashiers and pay masters. If payments to employees are made by check, facilities for cashing checks must be provided without expense to employees, and the Contractor shall be reimbursed therefor.

r. Rental actually paid by the Contractor, at rates not to exceed those approved by the Contracting Officer, for construction plant in sound and workable condition exceeding \$300 in value as may be necessary for the proper and economical prosecution of the work. Each contract for the rental of construction plant or parts thereof by the Contractor from third parties shall be in a form prescribed by the Contracting Officer, shall be subject to his approval and shall include provisions (1) that the lessor deliver to the Government title to such construction plant or parts thereof free of all liens and encumbrances when and if the total rental paid to the lessor for any item of construction plant or part thereof shall equal the valuation thereof, plus one per cent (1%) per month for each month or fraction thereof such part has been in use, and (2) that at the completion of the work being performed under the principal contract or upon termination of the contract as provided in Article CI, the Government may at its option purchase any part of such construction plant by paying to the lessor the difference between the valuation of such part or parts, plus one per cent (1%) per month for each month or fraction thereof such part or parts have been in use and the total rentals theretofore paid for such part or parts, provided, however, that either of such provisions may be

omitted from such rental agreements if the omission is approved by the Chief of Supply, Arm or Service.

s. Loading and unloading of construction plant, owned or rented by the Contractor and of such repair parts and spare parts as are not included in the rental and as are not made necessary by defects in such plant, or parts thereof or by the fault or negligence of the Contractor or his employees; the transportation thereof to the place or places where it is to be used in connection with said work and return transportation to the point of original shipment or equivalent mileage, provided that the cost of return transportation shall not exceed the cost of transportation to the point of original shipment and provided that charges for transportation over distances in excess of 500 miles must have the written authorization of the Contracting Officer in advance; and the installation and dismantling thereof.

t. Repairs and repair work, as are not included in the rental or made necessary by the fault or negligence of the Contractor or his employees.

, u. Temporary rights in land required in connection with the work.

v. Such other items as should, in the opinion of the Contracting Officer, be included in the cost of the work. When such an item is allowed by the Contracting Officer, it shall be specifically certified as being allowed under this paragraph.

2. Rental for Contractor's Equipment. Rental shall be paid at the rates indicated in the "Contractor's Equipment Rental Schedule, War Department, Office of The Quartermaster General", dated May, 1941 for such plant

or parts thereof as he may own and furnish as shown in the record of negotiations, both of which documents are on file in the Office of The Quartermaster General. Except as specified below such rental shall begin at the date of delivery of the plant, or parts thereof, to a common carrier for shipment to the site of the work, as evidenced by bill of lading or other satisfactory evidence covering such shipment. In the event the plant or parts thereof, is conveyed by the Contractor, the rental shall start at time transport to the site begins, but shall not exceed the equivalent time of shipping by common carrier. Unless title thereto passes to the Government at an earlier date, the rental shall terminate on the date of notice by the Contracting Officer to the Contractor that such plant or parts thereof are no longer required provided that rental shall continue to the date shipment of such plant or parts thereof is initiated, if such shipment is initiated without delay. If such plant, or any part thereof, is not in sound and workable condition when it arrives at the site of the work, the rental period thereof shall not begin until such plant, or parts thereof, shall have been placed in sound and workable condition at the expense of the Contractor, and no rental therefor shall be paid for any prior period. If such plant, or parts thereof, cannot be placed in sound and workable condition, no transportation charges for the shipment thereof shall be included in the cost of work or paid, either directly or indirectly, by the Government. Determination as to whether such plant, or parts thereof, are in sound and workable condition shall, in every instance, be made by the Contracting Officer. Slight delays in the use of such plant, or parts thereof, caused by necessary minor or field repairs and replacements shall not interrupt the rental period, but no rental shall be paid for the period of any delay in the use of such plant, or parts thereof, caused by other than necessary minor or field repairs.

The value shown in the record of negotiations hereinbefore referred to shall be deemed final unless the Contracting Officer shall, within ten days after the machinery has been set up and working, modify or change such valuation. When and if the total rental paid to the Contractor for any such part shall equal the valuation thereof, plus one per cent (1%) per month for each month or fraction thereof such part has been in use, and the Contractor shall convey title thereto to the Government free of all liens and encumbrances; at the completion of the work or upon termination of the contract as provided in Title VI, the Government may at its option purchase any part of such construction plant by paying to the Contractor the difference between the valuation of such part or parts, plus one per cent (1%) per month for each month or fraction thereof such part or parts have been in use and the total rental theretofore paid for such part or parts.

#### General.

3. The Government reserves the right to furnish any materials, construction equipment, machinery, tools, or services, including communication services necessary for the completion of the work. The Contractor shall cause the foregoing equipment and machinery to be suitably marked with an identifying mark or symbol, indicating that such items are the property of the United States. Upon the completion of this contract or upon demand, the Contractor shall return such equipment and machinery to the place designated by the Contracting Officer.

4. The Government reserves the right to pay directly to common carriers any and all transportation charges on construction plant, materials, machinery, equipment and supplies.

5. The Government reserves the right to pay to the persons concerned all sums due from the Contractor for labor, materials, or other charges.

6. No salaries of the Contractor's executive officers or partners, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of any kind, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work under this contract; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

7. The Contractor shall, to the extent of its ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications, and when unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect and the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, salvage, commissions and bonifications which have accrued to the benefit of the Contractor or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, or lost through compliance with the provisions of Section 5 of Article V-C, shall not be deducted from gross costs.

8. All revenue from the operation of the hospital or other facilities, except commissaries and cafeterias, or from rebates, discounts, refunds, etc., shall be accounted for by the Contractor and applied in reduction of the cost of the work. Revenue from the operations of the

commissaries and cafeterias shall be accounted for as provided in the procedure approved by the Contracting Officer under paragraph g, Section 1, of this Article V-A.

#### Article V-B—Payments.

##### Reimbursement For Cost.

1. a. The Government will currently reimburse the Contractor for expenditures made in accordance with Article V-A of this Title V, upon certification and delivery to and verification by the Contracting Officer of the original signed pay rolls for labor, the original receipted invoices for materials, equipment, etc., or other original papers satisfactory to the Contracting Officer. Reimbursement will be made as promptly as possible, generally weekly, but may be made at more frequent intervals if the conditions so warrant. All payments made under this paragraph a of Section 1 shall be subject to the provisions of Article V-C.

b. Payment of the sums provided in subparagraph 1 of paragraph p, of Section 1 of Article V-A shall be made as provided therein.

2. Rental for Contractor's Equipment. Rental as provided in Section 2 of Article V-A of this Title V, for such construction plant or parts thereof as the Contractor may own and furnish shall be paid monthly upon presentation of proper vouchers.

##### Payment of the Fixed-Fees.

3. a. The fixed-fee provided for in Article I-D of Title I shall be paid, in partial payments, less ten percent (10%) of each partial payment, on the last working day

of each calendar month from and after the approval date of this contract, as it accrues, based upon estimates made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title I.

b. The fixed fee provided for in Article II-C of Title II shall be paid in partial payments, less ten percent (10%) of each such partial payment, on the last working day of each calendar month from and after the approval date of this contract, as it accrues, based upon estimates made by the Contractor and approved by the Contracting Officer of the percentage of completion of the work and services provided for in Title II.

c. The fixed-fee of One Dollar (\$1.00) provided for in Article III-C shall be paid upon the completion of the work provided therein.

d. 1. The fixed-fee of Four Hundred Twenty Thousand Dollars (\$420,000.00) provided for in Section 2 of Article IV-C of Title IV shall be paid in twelve (12) partial payments of Thirty-five Thousand Dollars, (\$35,000.00) each, less 10% of each such partial payment, the first such partial payment to be payable on the last working day of the calendar month during which operation of the completed plant shall have commenced under Section 3 of Article IV-A of Title IV and the remaining partial payments to be payable on the last working day of the next succeeding eleven (11) months.

2. The fixed-fee of Four Hundred Twenty Thousand Dollars (\$420,000.00) for continued operation provided for in Section 4 of Article IV-A of Title IV shall be paid in twelve (12) partial payments of Thirty-five Thousand Dollars (\$35,000.00) each, less 10% of each such partial

payment the first such partial to be, payable on the last working day of the calendar month during which the additional operation provided for in such Section 4 of Article IV-A of Title IV shall have commenced; and the remaining partial payments to be payable on the last working day of the next succeeding eleven (11) months.

#### Payments By Contractor.

3. If bills for purchase of materials, machinery, or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor under this contract are not promptly paid by the Contractor or subcontractor; as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll until such bill or payroll is paid. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly provided such bills or payrolls are not disputed in good faith by the Contractor or subcontractor, and if such event a deduction equal to five per cent (5%) of the amount so paid directly shall be made from the Contractor's fee.

#### Final Payment.

4. Upon completion of the work under Titles I and II and its final acceptance in writing by the Contracting Officer, and again upon the completion of the work under Title IV, the Government shall pay to the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be

necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness. The Contractor shall, if required, furnish the Government with a release of all claims against the Government arising under and by virtue of this contract other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

#### Article V-C—Advances.

1. At any time, and from time to time, after the execution of this contract the Government, at the request of the Contractor, and subject to the approval of the Chief of Ordnance as to the necessity therefor, shall advance to the Contractor without payment of interest thereon by the Contractor, a sum or sums not in excess of thirty percent (30%) of the estimated cost of the work under this contract (as increased or decreased pursuant to the provisions of Article VII-C of Title VII or as increased pursuant to the provisions of Article IV-A of Title IV). When approximately sixty percent (60%) of said estimated cost (as increased or decreased pursuant to the provisions of Article VII-C of Title VII or as increased pursuant to the provisions of Article IV-A of Title IV) shall have been paid under Section 1 of Article V-B, a revised estimate of such costs shall be made by the Contractor; and if it appears that the then estimated cost exceeds the amount of the original estimate (increased or decreased as provided above), and the revised estimate is approved by the Chief of Ordnance, the Government shall under the conditions stated above advance to the Contractor without interest, not to exceed thirty percent (30%) of such excess. Such

advance or advances shall be made in each case upon the furnishing of such surety bonds in such penal sums not exceeding the total aggregate advance as the Secretary of War may prescribe; Provided, that the Secretary of War shall have prescribed the furnishing of a surety bond in connection with such advances, as security additional to that provided for in this contract; and Provided, Further, that if at any time the Secretary of War deems the security for any advance or advances theretofore made inadequate, the Contractor shall furnish on demand such other security, in the form of a surety bond or surety bonds, as will be satisfactory to the Secretary of War but at no time shall the Contractor be required to maintain in force a surety bond or surety bonds, the total aggregate penal sums of which exceed the aggregate amount of the advances authorized by the Secretary of War under this contract. It is understood that the Government will advance to the Contractor, pursuant to this Article V-C, the sums currently necessary to the Contractor for working capital to carry on the work contemplated under this contract, not in excess of thirty percent (30%) of the estimated cost of such work.

2. Whenever there shall be paid to the Contractor, pursuant to Section 1 of Article V-B reimbursement which, when added to the advance payment or payments made pursuant to Section 1 of this Article V-C, shall equal the full amount of the estimated cost of said work under this contract (as increased or decreased pursuant to the provisions of Section 1 of this Article V-C), no additional payment on account of said work shall be made to the Contractor by the Government until said advance payments are expended; Provided, however, that if the total cost of the work shall be in excess of the amount so paid to the Contractor including said advance payments, the Government, upon presentation

of satisfactory evidence, shall currently and promptly reimburse the Contractor to the extent of such excess cost (subject to any delay in the availability of appropriated funds); Provided, further, that if upon termination of the contract for other than the default of the Contractor there shall remain due the Government from the Contractor any sum theretofore advanced by the Government under this contract and not fully liquidated as above provided, the same shall be applied against any payment due the Contractor and any remaining balance of such sums shall be returned to the Government forthwith after final audit by the Government of all accounts hereunder.

3. In the event of cancellation or termination of this contract because of the default of the Contractor, the Contractor agrees to return to the Government, upon demand, without set-off any sum alleged to be due the Contractor, the outstanding balance of any advance payment; Provided, however, that the Contractor may retain in the account an amount sufficient to meet the outstanding obligations incurred by it in good faith under this contract pursuant to authorization by the Contracting Officer until assumption and discharge of such obligations by the Government or final disallowance thereof. Furthermore, if, in the opinion of the Chief of Ordnance, the unliquidated balance of the advance or advances made by the Government under this contract exceeds the amount necessary for the current needs of the Contractor, as determined by the Chief of Ordnance, the amount of such excess shall, upon demand made by the Chief of Ordnance, be promptly returned to the Government and will be credited against the balance due the Government for advances previously made. If the demand made in either event set forth above is not met within fifteen (15) days after the receipt of such de-

mand by the Contractor, the amount demanded will bear interest at the rate of six percent (6%) per annum from the date of the demand until payment is made.

4. All funds received as advance payments under this contract together with all funds received as reimbursements for the cost of the work under paragraph a of Section 1 of Article V-B of this contract, shall be deposited in a special bank account or accounts separate from the Contractor's general or other funds in a bank which is a member of the Federal Reserve System. Such special bank account or accounts shall be so designated as to indicate clearly to the bank their special character and purpose and shall be used by the Contractor exclusively as a revolving fund for carrying out the purposes of this contract and not for the general business of the Contractor. Balances in such special account or accounts shall at all times secure the repayment of such advances in connection with which the special account or accounts are opened, and the Government shall have a lien upon such balances to secure the repayment of such advances; which lien shall be superior to any lien of the bank upon such account or accounts by virtue of assignment or otherwise; Provided, however, that any bank in which such funds are deposited shall have no obligation whatever with respect to the use or disposition by the Contractor of funds withdrawn from such account or accounts or be liable for misuse by the Contractor of funds withdrawn prior to the receipt by such bank of notice from the Chief of Ordnance or the order of Court of competent jurisdiction directing it to refrain from permitting withdrawals by the Contractor. The Contracting Officer shall at all times be afforded proper facilities for inspection and audit of such special bank account or accounts.

5. The Contractor may pay to any third party for services in advance or pay for materials or supplies in advance of delivery at the site of the work or at an approved storage site, any of the sums previously advanced to it by the Government under the provisions of this contract, with the prior written approval of the Contracting Officer.

## **Title VI.**

### **Termination.**

#### **Article VI-A—Termination By Government.**

1. The Government may terminate this contract at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor. Upon receipt of such notice, the Contractor shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with performance of this contract and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders and subcontracts are chargeable to this contract.

2. If this contract is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises and take possession, for the purpose of completing the work contemplated by this contract, of any or all materials, tools, machinery, equipment, and appliance which may be owned by or in the possession of the Contractor, and all options, privileges, and rights.

and may complete, or employ any other person or persons to complete, said work. Following such termination rental shall be paid to the Contractor for such construction plant or parts thereof as he may own, and which the Government may retain at rates prescribed in Section 2 of Article V-A of Title V.

3. Upon the termination of this contract, full and complete settlement of all claims of the Contractor arising out of this contract shall be made as follows:

a. The Government shall assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with said work and the cost of which would be reimbursable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this Title, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such obligations or commitments.

b. The Government shall reimburse the Contractor for all expenditures made in accordance with Title V and not previously reimbursed.

c. The Government shall reimburse the Contractor for such further expenditures, made after the date of termination, for the protection of Government property and for accounting services in connection with the settlement of this contract as are required or approved by the Contracting Officer.

d. The Government shall pay to the Contractor any unpaid balance for the rental of the Contractor's equipment in accordance with Title V to the date of termination.

e. If the contract is terminated for the convenience of the Government, the Contractor will be paid all fees which have accrued at the date of termination, less fee payments previously made. If the contract is terminated due to fault of the Contractor, no additional payment on account of the fixed-fee will be made.

f. The obligation of the Government to make any of the payments required by this Title, or by Title V of this contract, shall be subject to any unsettled claims for labor or material or any claims which the Government may have against the Contractor.

4. Prior to final settlement the Contractor shall, if required furnish a release as required in Section 4 of Article V-B of Title V hereof.

## Title VII.

### General.

#### Article VII-A—Responsibility Of Contractor.

It is the understanding of the parties hereto, and the intention of this contract, that all work under Title IV of this contract is to be performed at the expense of the Government and that the Government shall hold the Contractor harmless against any loss, expense (including expense of litigation), or damage (including liability to third persons because of death, bodily injury or property injury or destruction or otherwise) of any kind

whatsoever arising out of or in connection with the performance of the work under such Title IV of this contract, except to the extent that such loss, expense, damage or liability is due to the personal failure on the part of the corporate officers of the Contractor, or of other representatives of the Contractor having supervision or direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

#### Article VII-B—Contingencies.

If the performance of any work under this contract is interrupted or prevented by reason of inability to obtain essential materials to be used in the performance of this contract, or by reason of labor shortage or labor disputes, from whatever cause arising, and whether or not the demands of the employees involved shall be reasonable and within the Contractor's power to concede, or by reason of fire, explosion, or accident, sabotage or any cause beyond its control, whether of a similar or dissimilar nature,\* the Contractor shall be excused from performing said work while or to the extent that it is prevented from so doing by one or more of such causes, and all such work shall be performed as soon as practicable after such disability is removed. It is further understood and agreed that the Contractor shall be liable for any failure or delays in the performance of Title IV of this contract, and accountable for the loss or destruction of or damage to any materials, tools, machinery, equipment, supplies, semi-finished or finished products or other property or materials located or stored at said Plant or used in connection with the operation thereof, if, and only if and to the extent that, the same is due to the personal failure on the part of the corporate of-

ficers of the Contractor, or of other representatives of the Contractor having supervision or direction of the operation of the Plant as a whole, to exercise good faith or that degree of care which they normally exercise in the conduct of the Contractor's business.

#### Article VII-C—Changes

The Contracting Officer may at any time after consultation with the Contractor, by a written order and without notice to the sureties, make changes in or additions to the drawings and specifications, issue additional instructions, require additional work, or direct the omission of work covered by the contract. If such changes cause a material increase or decrease in the amount or character of the work to be done under this contract, or in the time required for its performance, an equitable adjustment of the amount of the fixed-fee to be paid to the Contractor shall be made and the contract shall be modified in writing accordingly; Provided, however, that there shall be no adjustment in the amount of the fixed-fee as provided herein nor shall there be any claim for increased compensation because of any errors and/or omissions made in computing the original estimates of cost hereunder or where the estimated costs vary from the actual costs. Any claim for adjustment under this Article must be asserted within ten (10) days from the date the change is ordered: Provided, however, that the Contracting Officer, if he determines that the facts justify such action may receive and consider, and with the approval of the Chief of Branch, adjust any such claims asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Article VII-N hereof, but nothing provided in this Article shall excuse the Con-

tractor from proceeding with the prosecution of the work so changed.

#### Article VII-D--Title.

The title to all work, completed or in the course of construction, preparation or manufacture shall be in the Government. Likewise, upon delivery at the site of the work, at an approved storage site or other place approved by the Contracting Officer and upon inspection and acceptance in writing by the Contracting Officer, title to all materials, tools, machinery, equipment and supplies, for which the Contractor shall be entitled to be reimbursed under Title V hereof shall vest in the Government. These provisions as to title being vested in the Government shall not operate to relieve the Contractor from any duties imposed under the terms of this contract.

#### Article VII-E--Materials And Workmanship.

1. The work shall be executed in the best and most workmanlike manner by qualified, careful, and efficient workers, insofar as they are available, in strict conformity with the best standard practices.

2. Except it be otherwise authorized by the Contracting Officer, all materials shall be of the best quality of their respective kinds. If the Contracting Officer requires that the Contractor submit for prior approval samples of materials proposed for use in the work covered by this contract, the Contractor shall make no commitments for such materials until the submitted samples have been approved by the Contracting Officer.

**Article VII-F—Records And Accounts—Inspection And Audit.**

1. The Contractor agrees to keep records and books of account, on a recognized cost-accounting basis, showing the actual cost to it of all items of labor, materials, equipment, supplies, services, and other expenditures of whatever nature for which reimbursement is authorized under the provisions of this contract. The system of accounting to be employed by the Contractor shall be such as is satisfactory to the Contracting Officer.

2. The Contracting Officer shall at all times be afforded proper facilities for inspection of the work and of the special bank account or accounts provided for in Article V-C hereof, and shall at all times have access to the premises, work, and materials, to all books, records, correspondence, instructions, plans, drawings, receipts, vouchers, and memoranda of every description of the Contractor pertaining to said work; and the Contractor shall, except such original documents as are submitted in support of reimbursement vouchers, preserve for a period of 3 years after completion or termination of this contract, all the books, records, and other papers herein-mentioned.

3. Any duly authorized representative of the Contractor shall be accorded the privilege of examining the books, records, and papers of the Contracting Officer relating to the cost of the work for the purpose of verifying such cost.

4. The Contracting Officer shall have the right to decide which functions of checking and auditing are to be performed exclusively by the Government and to prescribe procedures to be followed by the Contractor in such accounting, checking, and auditing functions as

he may continue to perform. The employment and number of personnel to be engaged by the Contractor for checking, auditing, and accounting work shall be subject to the approval of the Contracting Officer and if, in the opinion of the Contracting Officer, the number of employees engaged in checking, auditing and accounting work is excessive, the Contractor shall make such reductions in force as the Contracting Officer deems necessary.

#### Article VII-G—Special Requirements.

The Contractor hereby agrees that it will:

1. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approve or require in writing.
2. Procure all necessary permits and licenses; obey and abide by all applicable laws, regulations and ordinances and other rules of the United States of America, of the state, territory, or subdivision thereof wherein the work is done, or of any other duly constituted public authority.
3. Unless this provision is waived in writing by the Contracting Officer, reduce to writing every contract in excess of Two Thousand Dollars (\$2,000.00) made by it for the purpose of the work hereunder for services (except contracts of employment), materials, supplies, machinery, or equipment, or for the use thereof; insert therein a provision that such contract is assignable to the Government; make all such contracts in its own name, and not bind or purport to bind the Government or the Contracting Officer thereunder. No purchase in excess of

Five Hundred Dollars (\$500.00) shall be made or placed without the approval of the Contracting Officer.

4. Enter into no subcontract for any portion of the work without the written approval of the Contracting Officer. Subcontracts are defined as contracts entered into by the Contractor with others which involve the performance, wholly or in part, at the site of the work, of some part of the work described in Titles I and II hereof.

5. At all times during the progress of the work keep at the site thereof a duly appointed and qualified representative who shall receive and execute on the part of the Contractor such notices, directions, and instructions as the Contracting Officer may give under the terms of this contract.

6. The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the public interest, subject however to appeal under the provisions of Article VII-N for reinstatement of such employee.

7. Furnish as required by the Contracting Officer for use in connection with the work, those items of construction equipment and for machinery listed in the record of negotiations as mentioned in Section 2 of Article V-A of Title V, provided that such pieces of equipment and/or machinery shall be furnished, if required, within ten (10) days of the date on which such pieces of equipment and/or machinery are stated to be available. In the event that the Contractor fails to furnish any piece of equipment and/or machinery in accordance with the terms of this provision after the Contracting Officer has

required the furnishing of such piece of equipment and/or machinery the additional cost of obtaining such equipment and/or machinery from any source other than the Contractor shall be paid by the Contractor and shall not be a reimbursable expenditure.

8. At all times use its best efforts in all acts hereunder to protect and subserve the interest of the Government.

#### **Article VII-H—Preference For Domestic Articles.**

In the performance of the work covered by this contractor, subcontractors, materialmen or suppliers, shall use only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, and only such manufactured articles, materials and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials or supplies of the class or kind to be used or such articles, materials or supplies from which they are manufactured, as are not mined, produced or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials or supplies, as may be expected by the Secretary of War under the proviso of Title III, Section 3, of the Act of March 3, 1933: 47 Stat. 1520 (41 U.S.C. 10b).

#### **Article VII-I—Convict Labor.**

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor.

**Article VII-J—Workmen's Compensation Laws.**

During the life of this contract the Contractor will provide and maintain for all employees of the Contractor engaged in work under this contract, Workmen's Compensation Insurance or such other protection for employees as may be required by Federal or State statutes in the jurisdiction in which such work is performed, under direction of the Contracting Officer. If the whole or any part of the work under this contract is sublet on a Fixed-Fee basis, the same protection provided for employees of the Contractor will be provided for the protection of the employees of the subcontractors. In those cases where the whole or any part of the work under this contract is sublet on a Lump-Sum basis, the Contractor will require the subcontractor to maintain for their employees Workmen's Compensation Insurance or such other protection for employees as may be required by Federal or State statutes in the jurisdiction in which such work is performed. Prior to commencement of operations under this contract, the Contractor will supply the Contracting Officer with proof of compliance with this Article.

**Article VII-K—Accident Prevention.**

In order to protect the life and health of his employees in the performance of Title I of this contract, the Contractor will comply with all pertinent provisions of the "Safety Requirements For Excavation, Building And Construction, Construction Division, O.Q.M.G.", approved by the Chief of the Construction Division, March 1, 1941, and of the specifications, and will take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for this purpose. The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the

manner and on the forms prescribed by the Contracting Officer, all cases of death, occupational disease, and traumatic injury arising out of or in the course of employment on work under this contract.

#### **Article VII-L—Officials Not To Benefit.**

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### **Article VII-M—Covenant Against Contingent Fees.**

The Contractor warrants that it has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract, or in its discretion, to deduct from payment due the Contractor the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

#### **Article VII-N—Disputes.**

Except as otherwise specifically provided herein, all disputes concerning questions of fact arising under this contract shall be decided by the Contracting Officer, subject to written appeal by the Contractor within 30 days to the Chief of Branch concerned or his duly authorized

representative, whose decision shall be final and conclusive upon the parties hereto, when the amount involved is \$50,000.00 or less. When the amount involved is more than \$50,000.00, or when the dispute arises under Section 6 of Article VII-G, or where no specific amount is involved, the decision of the Chief of Branch shall be subject to written appeal within 30 days by the Contractor to the Secretary of War or his duly authorized representative, whose decision shall be final and conclusive upon the parties hereto. In the meantime the Contractor shall diligently proceed with the work as directed.

#### **Article VII-O—Contractor's Organization And Methods.**

Within a reasonable time after the execution of this contract the Contractor shall submit to the Contracting Officer a chart showing the executive and administrative personnel to be regularly assigned for full or part time service in connection with the work under this contract, together with a written statement of their duties and the administrative procedure to be followed by the Contractor for the control and direction of the work; and the data so furnished shall be supplemented as additional pertinent data becomes available. There shall also be submitted to the Contracting Officer by the Contractor charts of the various field organizations showing all personnel, other than artisans, mechanics, helpers, and laborers to be assigned for full or part time service outside of the central office organization, together with a written statement of their duties and rates of pay, and the procedure proposed to be followed by the Contractor for the accomplishment of all field work, including temporary requirements; and the data so furnished shall be supplemented as additional pertinent data becomes available. Statements of procedure shall include purchasing,

disbursing, accounting, transportation, storage, employment, housing, sanitation, subsistence, recreation and similar essential activities and methods.

#### **Article VII-P—Assignment Of Claims.**

Neither this contract, nor any interest therein, shall be assigned or transferred by the Contractor to any other party or parties.

#### **Article VII-Q—Loading And Unloading Railway Cars.**

The Constructor shall load promptly all railroad cars furnished for loading upon his order and shall unload from railroad cars promptly upon arrival all shipments consigned to him and shall provide storage facilities and other facilities necessary for these purposes; and the Contractor shall not order railway cars for loading unless they can be loaded promptly and shall not cause or permit shipments to be consigned to him unless they can be unloaded from railroad cars promptly upon arrival.

#### **Article VII-R—Notice To Government Of Labor Disputes.**

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of Title I of this contract, the Constructor will immediately give notice thereof to the Chief of the Construction Division, O.Q.M.G. Such notice shall include all relevant information with respect to such dispute.

#### **Article VII-S—Approval Required.**

This contract shall be subject to the written approval of the Secretary of War and shall not be binding until so approved.

### Article VII-T—Statutory Provisions.

It is understood that the respective undertakings to conform to the requirements of the several statutes hereinbefore referred to shall be operative only so long as and to the extent that such statutory requirements are applicable hereunder.

### Article VII-U—Definitions.

1. The term "Chief of Branch" refers to the Chief of Ordnance or The Quartermaster General.

2. The terms "Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. For the original signing of this contract, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer appointed by The Quartermaster General and the Contracting Officer appointed by the Chief of Ordnance.

4. The term "Contracting Officer" when used in connection with the supervision of performance of construction work of the entire project, and in connection with the supervision of preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance, refers to the Contracting Officer appointed by the Quartermaster General, or to his successor or duly authorized representative; and when used in connection with any other phase of the work to be per-

formed under this contract it refers to the Contracting Officer appointed by the Chief of Ordnance, or to his successor or duly authorized representative.

#### Article VII-V—Racial Discrimination.

The Contractor, in performing the work required by this contract, shall not discriminate against any worker because of race, creed, color or national origin.

#### Article VII-W—Alterations.

The following alterations were made in this contract before it was signed by the parties hereto:

On page 26, section (b) of paragraph 1, Article I-A of Title I was changed from "2,400 Rounds" to "8,400 Rounds".

On page 74, Article VII-F of Title VII following paragraph 3 add the following as paragraph 4:

"4. The Contracting Officer shall have the right to decide which functions of checking and auditing are to be performed exclusively by the Government and to prescribe procedures to be followed by the Contractor in such accounting, checking, and auditing functions as he may continue to perform. The employment and number of personnel to be engaged by the Contractor for checking, auditing, and accounting work shall be subject to the approval of the Contracting Officer, and, if in the opinion of the Contracting Officer, the number of employees engaged in checking, auditing and accounting work is excessive, the Contractor shall make such reductions in force as the Contracting Officer deems necessary."

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

**THE UNITED STATES OF  
AMERICA.**

By (Sgd.) **L. H. CAMPBELL, JR.,**  
(L. H. Campbell, Jr.),  
Brig. Gen., U. S. Army,  
(Contracting Officer appointed by Chief of Ordnance).

By (Sgd.) **HOMER W. JONES,**  
(Homer W. Jones),  
Lieut. Col., J.A.G.D.,  
(Contracting Officer appointed by The Quartermaster General).

Approval recommended:

July 7, 1941.

(Sgd.) **C. M. WESSON,**  
(C. M. Wesson),  
Major General,  
Chief of Ordnance.

**SILAS MASON COMPANY,**  
(Contractor).

Approval recommended:

July 8, 1941.

(Sgd.) **E. B. GREGORY,**  
(E. B. Gregory),  
Major General,  
The Quartermaster General.

By (Sgd.) **H. L. MYER,**  
Vice President,  
500 5th Ave., N. Y. City,  
(Business Address).

Two Witnesses as to Execution, by the Contractor:  
(Address).

(Sgd.) ARNOLD HANGER,  
500 5th Ave.,  
(Address) New York.

(Sgd.) FRANCIS DONALDSON,  
Tuckahoe, N. Y.

Approved July 10, 1941, by direction of the Secretary  
of War.

(Sgd.) ROBERT P. PATTERSON,  
(Robert P. Patterson),  
Under Secretary of War.

I, H. M. Collins, certify that I am the Assistant Secretary of the corporation named as Contractor herein; that H. L. Myer who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

.....  
(Sgd.) H. M. COLLINS,  
Asst. Secretary.

(Corporate Seal)

I hereby certify that, to the best of my knowledge and belief, based upon observation and inquiry, H. L. Myer who signed this contract for the Silas Mason Company had authority to execute the same, and is the individual who signs similar contracts on behalf of this corporation with the public generally.

(Sgd.) L. H. CAMPBELL, JR.,  
(L. H. Campbell, Jr.),  
Brig. Gen., U. S. Army.

①

Approved: April 13, 1942.

(Sgd.) C. M. WESSON,  
(C. M. Wesson), CTH  
Major General,  
Chief of Ordnance.

Approved: Apr. 15, 1942,

(Sgd.) E. REYBOLD,  
(Eugene Reybold),  
Major General,  
Chief of Engineers.

Contract No. W-ORD-517 DA-W-ORD-4 Supp. 1.

Supplemental Contract  
to

Cost-Plus-a-Fixed-Fee

New Ordnance Facility.

Construction and Operation Contract.

War Department.

Contractor: Silas Mason Company, New York, N. Y.

Contractor for: Supplemental contract to modify terms of the original contract to include stipulations regarding race discrimination, payment for telegraph charges, provision, excluding subrogation, title to materials, etc., storage of materials, etc., and definitions.

Place: At or near Minden, Louisiana.

Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.

This contract is authorized by the Act of July 2, 1940, (Public No. 703, 76th Cong.) and the act approved December 18, 1941 (Public Law 354—77th Cong.) and Executive 42-4571 Order No. 9001 dated December 27, 1941.

(Sgd.) J. B. ROSE,

(J. B. Rose),

Brig. Gen., Ord. Dept.

### Supplemental Contract,

This Supplemental Contract, entered into this 11th day of April, 1942, by The United States of America (hereinafter referred to as "the Government"), represented by the Contracting Officers executing this contract, and Silas Mason Company, a corporation organized and existing under the laws of the State of Delaware; of the city of New York, in the State of New York, Witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4 and being hereinafter sometimes referred to as the "original contract"; and

Whereas, the Under Secretary of War has from time to time issued directives for the modification of existing contracts to include certain matters; and

Whereas, the Government now desires to modify said original contract so as to provide certain stipulations regarding racial discrimination, payment for telegraph charges, provision excluding subrogation, title to materials, etc., storage of materials, etc., and definitions; and

Whereas, the Contractor has agreed to such modification upon the terms, conditions, and provisions hereinafter set out; and

Whereas, as a result of negotiations, the Secretary of War has directed that the Government enter into a supplemental contract with the Contractor, for the accomplishment of the above described changes;

Now, Therefore, the parties hereto do mutually agree that the said original contract shall be and it is hereby modified in the following particulars:

A. Change Section 6 of Article IV-A of Title IV to read:

(a) The Government shall furnish all explosives, including neutral nitrate of ammonia solution for the manufacture of nitrate of ammonia, and all metal parts for the loading of the Ammunition, including shipping materials and containers when and as requisitioned from time to time by the Contractor, to be delivered when required, f. o. b. said Plant, in sufficient quantities to enable the Contractor to carry on the operation of the Plant provided for in this Title IV.

(b) The Contractor shall accept, handle and store, within the storage capacity of the Plant not immediately necessary for use in connection with the operation of the Plant, such materials and explosives as it may be directed from time to time by the Contracting Officer; provided, that the Government shall remove or cause to be removed any material or explosives so stored whenever the storage capacity so utilized becomes necessary to the operation of the Plant; and provided, further, that the Contractor shall be under no obligation to accept or store or permit to be stored at said Plant, any explosives which would render the work to be done by the Contractor hereunder hazardous beyond what is usual in the normal operation of a Plant of the type provided for herein.

B. Change Section 5 of Article V-A of Title V to read:

The Government reserves the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges. The Government will pay direct for all telegrams, telephone communications (including teletype and facsimile when authorized by the Contracting Officer to be installed), cablegrams, radiograms, and similar messages that may be sent by the Contractor pertaining directly to the contract for work to be done or materials to be furnished thereunder, and the Contractor is hereby designated as an agent of the Government for the purpose of causing the transmittal of any such messages.

C. Change Article VII-D of Title VII to read:

Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under this contract shall vest in the Government at such point or points as the Contracting Officer may designate in writing, provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment, and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; provided further that, upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be responsible for the removal of the rejected property within a reasonable time.

D. Change Section 1 of Article VII-G of Title VII to read:

1. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for such

bonds and insurance in such forms and in such amounts and for such periods of time as the Contracting Officer may approve or require in writing. Such bond or insurance policy shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

E. Change Article VII-V of Title VII to read:

1. The Contractor in performing the work required by this contract shall not discriminate against any worker because of race, creed, color or national origin.

2. The Contractor agrees that subparagraph 1 above will be inserted in all its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles of raw material shall not be considered as a subcontract.

F. Change Article VII-U of Title VII to read:

1. The term "Chief of Branch" refers to the Chief of Ordnance, or The Chief of Engineers.

2. The terms "Secretary of War" or "Chief of Branch" shall include their duly authorized representatives as the case may be other than the Contracting Officer.

3. For the original signing of this contract, or any modification hereof, the term "Contracting Officer" as used herein shall be deemed to include the Contracting Officer in the Office of The Chief of Engineers appointed for that purpose by The Chief of Engineers and the Contracting Officer appointed by the Chief of Ordnance. For all other purposes the term "Contracting Officer" shall mean the District Engineer of the United States Engineer District in which the contract work is being performed, his successor or duly authorized representative; or the Contracting Officer appointed by the Chief of Ordnance, his successor, or duly authorized representative.

4. The term "Contracting Officer" when used in connection with the approval of performance of construction work of the entire project, and in connection with the approval of preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings, such as offices, general warehouses and garages, and such miscellaneous construction as may be requested by the Chief of Ordnance, refers to the District Engineer of the United States Engineer District in which the Contract work is being performed, his successor or duly authorized representative; and when used in connection with any other phase of the work to be performed under this contract the term "Contracting Officer" refers to the Contracting Officer appointed by the Chief of Ordnance, to his successor or duly authorized representative.

G. Except as herein provided, the terms and conditions of the original contract as heretofore modified shall continue in full force and effect and shall apply with equal force to this supplemental agreement.

H. This supplemental contract shall be subject to the written approval of the Chief of Ordnance and The Chief of Engineers and shall not be binding until so approved.

I. The following alterations were made in this supplemental contract before it was signed by the parties hereto:

None.

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES OF  
AMERICA.

By (Sgd.) J. B. ROSE,  
(J. B. Rose),  
Brig. Gen., Ord. Dept.,  
(Contracting Officer appointed by The Chief of Ordnance).

By (Sgd.) C. E. STRAIGHT,  
(C. E. Straight),  
Major, J.A.G.D.,  
(Contracting Officer appointed by The Chief of Engineers).

SILAS MASON COMPANY,  
(Contractor).

By (Sgd.) H. L. MYER,  
Vice Pres.,  
Box 1162, Shreveport, La.,  
(Business Address),  
Louisiana Ordnance Plant.

Two Witnesses as to Execution by the Contractor:

(Sgd.) R. L. TELFORD,

Box 1162, Shreveport, La.,

(Address),

La. Ordnance Plant.

(Sgd.) P. L. WILSON,

Box 1162, Shreveport, La.,

Louisiana Ordnance Plant,

(Address).

I, C. L. Taylor, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that H. L. Myer who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) C. L. TAYLOR.

(Corporate Seal).

Date May 5, 1943.

Change Order No. 2, Contract No. W-ORD-517 DA-W-ORD-4, as Amended.

Due to change in identification system of modifications to Contracts this Change Order is numbered 2, there being in existence Supplement 1.

War Department—Ordnance Department.

Change Order  
to  
Cost-Plus-a-Fixed-Fee.

New Ordnance Facility.

Construction and Operation Contract.

Contractor: Silas Mason Company, New York City,  
New York.

Name and Location of Plant: Louisiana Ordnance Plant  
near Minden, Louisiana.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, the following additional instructions are hereby issued:

2. The Contractor shall, as directed by the Contracting Officer's Representative:

a. Repair construction equipment for the Corps of Engineers; provided, however, that such repair work to be done does not necessitate substantial additional tooling up (other than the purchase of necessary perishable tools) or the purchase by the Contractor of any additional machines or equipment; provided, further, that such repair work provided for hereunder shall be performed at such times only when the capacity of the machine shop, which is to be used in the performance of such repair work, is not being utilized in the work of the Louisiana Ordnance Plant. The work of the Louisiana Ordnance Plant shall at all times have priority over the

repair work to be done on construction equipment for the Corps of Engineers. All repair work for the Corps of Engineers on construction equipment shall be performed under an agreement that all risk of loss due to damage done by accident or otherwise shall be borne by the Corps of Engineers. All work done and materials or parts furnished in connection with any repairs hereunder to the construction equipment of the Corps of Engineers shall be performed and furnished at cost. The receipts from such work performed and materials furnished in the repair of such construction equipment shall be applied in reduction of the cost of the work of the Plant. The Contractor will be reimbursed for all of its expenditures in connection with wages paid and materials used in the performance of the work provided for herein, in accordance with the provisions of Article V-A of Title V of Contract No. W-ORD-517 DA-W-ORD-4, as amended.

b. Transport or cause to be transported, by subcontract or otherwise, any of the products of said Plant in accordance with the directions of the Contracting Officer, to such points within the continental United States as may be designated. The Contractor shall be reimbursed for its expenditures in performance of the work required under this paragraph in accordance with the provisions of Article V-A of Title V of Contract No. W-ORD-517 DA-W-ORD-4, as amended.

3. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-517 DA-W-ORD-4, as amended.

4. There is no change in the estimated cost of the Contractor's services under said Contract and no change

is made in the fixed-fee. No change in the time required for performance involved.

5. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 2:

THE UNITED STATES OF  
AMERICA.

(Sgd.) OTTO M. JANK,

(Otto M. Jank),

Colonel, Ord. Dept., JJMcI  
Contracting Officer.

Receipt is hereby acknowledged of the above Change Order No. 2 to Contract No. W-ORD-517 DA-W-ORD-4, dated March 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date 7/5, 1943.

SILAS MASON COMPANY,

(Seal)

(Contractor).

By (Sgd.) R. L. TELFORD,  
Vice Pres.

McInerney/111 Change Order 3 to Contract W-ORD-517  
DA-W-ORD-4, as amended May 26, 1943.

Due to change in identification system of modifications to Contracts this Change Order is numbered 3, there being in existence 1 Supplement and Change Order No. 2.

War. Department—Ordnance Department.

Change Order  
to  
Cost-Plus-a-Fixed-Fee.

Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

Name and Location of Plant: Louisiana Ordnance Plant, Minden, Louisiana.

1. Pursuant to the provisions of Article VII-C of Title VII, Contract W-ORD-517 DA-W-ORD-4, as amended, the following instructions are hereby issued:

Anything in Contract W-ORD-517 DA-W-ORD-4, as amended; to the contrary notwithstanding, unless otherwise directed or authorized by the Contracting Officer, all drawings required to be furnished by the Contractor will be prepared in pencil on tracing paper or pencil tracing cloth of approved quality by such methods and of such quality of workmanship as will permit the revision of such drawings for record purposes and the making of satisfactory reproductions thereof. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise.

2. This Change Order involves no appreciable increase or decrease in the estimated cost of the work under said Contract and no increase or decrease in the fixed-fees thereunder will be made. No appreciable change in the time required for performance is involved.

3. Except as hereby changed all the terms and conditions of Contract W-ORD-517 DA-W-ORD-4, as amended, shall remain in full force and effect and shall also apply in carrying out the provisions of this Change Order No. 3.

**THE UNITED STATES OF  
AMERICA.**

(Sgd.) **RAYMOND REBSAMEN,**  
(Raymond Rebsamen),  
Major, Ord. Dept.,  
Executive Officer, JJMcI  
Field Director Ammunition  
Plants,  
(Contracting Officer  
appointed by the Chief  
of Ordnance).

(Sgd.) **O. P. EASTERWOOD, JR.,**  
(O. P. Easterwood, Jr.),  
Major, C. of E.,  
(Contracting Officer ap-  
pointed by the Chief of  
Engineers).

Receipt is hereby acknowledged of the above Change Order No. 3 to Contract No. W-ORD-517 DA-W-ORD-4, as amended, dated July 3, 1941, and the Contractor hereby accepts the terms and conditions thereof.

Date June 10, 1943.

**SILAS MASON COMPANY,**  
(Contractor).

By (Sgd.) **JOHN J. WATTS,**  
Vice Pres.

**Negotiated Contract.**

**Contract No. W-ORD-517, DA-W-ORD-4, Supplement 4,**

**Supplemental Contract**

**Cost-Plus-a-Fixed-Fee.**

**New Ordnance Facility**

**Construction and Operation Contract.**

**War Department.**

**Contractor: Silas Mason Company.**

**Supplemental Contract for: Clarifying the intention of the parties with respect to certain provisions of the contract pertaining to payment of wages.**

**Place: At or near Minden, Louisiana.**

**Payments to be made by Finance Officer, U. S. Army, at New Orleans, Louisiana.**

**The equipment, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:**

**ORD 9762 P99 A0141-02**

**ORD 9763 P99 A0141-02**

**ORD 22578 P120 A1005-23**

Approval recommended:

July 12, 1943.

L. H. CAMPBELL, JR.,

† Major General,

Chief of Ordnance, VCR.

By (Sgd.) E. P. RUSSELL,

(E. P. Russell),

Lt. Col., Ord. Dept.

Approval recommended:

....., 1943.

E. REYBOLD,

Major General,

Chief of Engineers.

Approval recommended:

(Sgd.) C. L. STURDEVANT,

(C. L. Sturdevant),

Brigadier General,

Acting Chief of Engineers.

Approved August 3, 1943.

(Sgd.) PHILLIPS W. SMITH,

(Phillips W. Smith),

Lt. Col., G.S.C.,

Deputy Director, Purchases Division.

This Supplement Contract is authorized by the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.) as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

(Sgd.) RAYMOND REBSAMEN,

(Raymond Rebsamen),

Lt. Col., Ord. Dept., Execu-

tive Officer, Field Direc-

tor of Ammunition Plants,

Contracting Officer.

## Supplemental Contract.

This Supplemental Agreement, entered into this 6th day of July, 1943, by and between the United States of America (hereinafter referred to as the "Government"), represented by the Contracting Officer executing this Supplemental Agreement and Silas Mason Company (hereinafter referred to as the "Contractor"),

Witnesseth That:

Whereas, there is now in full force and effect between the parties hereto a certain contract providing for the designing, constructing and equipping, and at the option of the Government, training of key personnel, and operation of a new ordnance facility at or near Minden, Louisiana, bearing date of July 3, 1941 and being identified as Contract No. W-ORD-517 DA-W-ORD-4 (hereinafter referred to as the "principal contract"); and

Whereas, said Principal Contract has been amended by Supplemental Contract dated April 11, 1942, identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4, Supplement 1, and by Change Orders No. 2 and 3, dated May 5, 1943, and May 26, 1943, respectively; and

Whereas, said principal contract provides in Article I-F, Section 2 as follows:

"2. Should the Contractor or any subcontractor pay to any laborer or mechanic a wage based upon a rate in excess of the wage rate for the classification in which said laborer or mechanic is included as established for the work by the Secretary of Labor, such increased wage shall be at the expense of the Contractor and shall not

be reimbursed by the United States. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the Contractor's payrolls, prior to reimbursement as contemplated in Section 1 of Article I-D hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates, established for such laborers and/or mechanics, the reimbursement made to the Contractor on account of such pay rolls will not include such excess payments. The provisions of this Section shall not apply when wage rates for a particular classification greater than those prescribed by the Secretary of Labor have been approved in writing by the Contracting Officer.";

and

Whereas, said paragraph was designed and incorporated in said Principal Contract for the express purpose of limiting wages of employees under the direct supervision of the Contractor; and of those employees under subcontracts whose wages were reimbursable as such, as in the case of cost-plus-a-fixed-fee subcontracts; and

Whereas, said provision was in no way intended to be applicable to or affect employees under Lump Sum or Unit Price contracts awarded under said Principal Contract; and

Whereas, it is desired to clarify said Principal Contract so as to more clearly set forth the aforesaid understanding; and

Whereas, the Secretary of War is authorized by the First War Powers Act, 1941, and Executive Order No. 9001, within the limits of the amounts appropriated there-

for, to enter into amendments or modifications of contracts, and by agreement to modify or amend or settle claims under contracts, whenever in his judgment the prosecution of the war is thereby facilitated; and

Whereas, it has been determined by the Secretary of War that in his judgment the prosecution of the War will be facilitated by the modification of the Principal Contract as hereinafter set out.

Now, Therefore, the parties do hereby mutually agree that said Principal Contract shall be and the same is hereby amended in the following manner:

1. Delete Paragraph a. of Section 2, Article 1-F and insert in lieu thereof the following:

"a. All wage rates, including compensation for overtime for laborers and mechanics engaged in work under this contract shall be approved in writing by the Chief of the Supply Service or a representative expressly designated by him for that purpose, and any amount paid by the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Chief of the Supply Service or a representative expressly designated by him for that purpose shall be at the expense of the Contractor and shall not be reimbursed by the Government. When, in connection with the audit and check by the Contracting Officer or his authorized representative, of the Contractor's pay rolls prior to reimbursement as contemplated in Section 1 of Article I-D hereof, it is found that one or more laborers and/or mechanics have been paid wages at rates in excess of the wage rates approved as herein provided, the reimbursement made to the Contractor on account of such pay rolls will not include any such excess payments."

\*2. It is hereby understood and agreed that the foregoing modification shall, in addition to being considered

effective subsequent to the date of this instrument, be considered applicable retroactively to the date of the Principal Contract.

3. This Supplemental Agreement shall be subject to the approval of the Secretary of War or his duly authorized representative, and shall not be binding unless so approved.

4. Said Principal Contract, as modified and amended, shall be and remain in full force and effect.

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES OF  
AMERICA.

By (Sgd.) RAYMOND REBSAMEN,  
(Raymond Rebsamen),  
Lt. Col., Ord. Dept., JJMcI  
Executive Officer, Field  
Director of Ammunition  
Plants,  
(Contracting Officer appointed by The Chief of Ordnance).

By (Sgd.) Q. P. EASTERWOOD, JR.,  
(Q. P. Easterwood, Jr.),  
Major, Corps of Engineers,  
(Contracting Officer appointed by The Chief of Engineers).

SILAS MASON COMPANY,  
(Contractor).

By (Sgd.) R. L. TELFORD,  
Vice Pres.,  
Box 1162, Shreveport,  
(Business Address).

Two Witnesses as to Execution by the Contractor:

(Sgd.) RUTH J. MacLEAD,  
Box 1162, Shreveport, La.,  
(Address).

(Sgd.) KATHARINE MORELAND,  
Box 1162, Shreveport,  
(Address).

I, C. L. Taylor, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that R. L. Telford who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) C. L. TAYLOR,

(C. L. Taylor),

Asst. Secretary, Silas Mason  
Company.

(Corporate Seal)

Due to change in identification system of modifications to contracts this Change Order is numbered 5, there being in existence Supplements 1 and 4, and Change Orders 2 and 3.

Parsons/nl.

Date: October 4, 1943.

Change Order No. 5.

Contract No. W-ORD-517 DA-W-ORD-4, as Amended.

**War Department—Ordnance Department.**

**Change Order  
to  
Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction and Operation Contract.**

**Contractor: Silas Mason Company, New York, New York.**

**Name and Location of Plant: Louisiana Ordnance Plant, Minden, Louisiana.**

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, the following additional instructions are hereby issued:

a. You are hereby authorized and directed, with the approval of the Contracting Officer, to do all things necessary or incident to operating the Ammonia Nitrate Crystallizing facilities of the Plant to crystalize Ammonium Nitrate solution, and to coat same in accordance with the process hereby referred to as the Tennessee Valley Authority process, including, without limiting the generality of the foregoing, the reworking and coating of Ammonium Nitrate now in storage, the training of personnel incident thereto at Tennessee Valley Authority's plant or elsewhere, and the loading of same on cars in bags ready for shipment.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract W-ORD-517 DA-W-ORD-4, as amended.

3. There is an appreciable change in the estimated cost of the Contractor's services under said Contract but no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 5.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By **RAYMOND REBSAMEN,**  
(Raymond Rebasmen)

Lt. Col., Ord. Dept., Execu-  
tive Officer, Field Direc-  
tor Ammunition Plant.  
(Contracting Officer ap-  
pointed by the Chief of  
Ordnance.)

JJMcl

Receipt is hereby acknowledged of the above Change Order No. 5 to Contract W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: Oct. 12th, 1943.

**SILAS MASON COMPANY,**  
(Contractor)

(Seal)

(Sgd.) By **R. L. TELFORD,**  
Vice President.

Due to change in identification system of modifications this Supplement is numbered 6, there being in ex-

istence Supplements 1 and 4 and Change Orders 2, 3 and 5.

Contract No. W-ORD-517 DA-W-ORD-4.

Supplement 6.

Approved: Dec. 2, 1943.

L. H. CAMPBELL, JR., VCR

Major General, Chief of Ordnance.

(Sgd.) By E. P. RUSSELL,

(E. P. Russel)

Lt. Col., Ord. Dept.

Cost-Plus-A-Fixed-Fee

New Ordnance Facility

Construction and Operation Contract.

War Department.

Contractor: Silas Mason Company.

Place: At or near Minden, Louisiana.

Supplemental Contract for: Authorizing the disposition of property and the modification of subcontracts and purchase orders; and modification of provisions pertaining to fixed-fee, Walsh-Healey Act, transportation, communications, travel, overhead expense, termination, insurance, renegotiation, convict labor, disputes, definitions, labor disputes and anti-discrimination.

This Supplement makes no change in estimated costs, but reduces fixed-fees under Title IV for second year's operation from \$420,000 to \$370,000.

Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.

The new ordnance facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

- 5-9762 P210 A210/40141.
- 5-9763 P210 A210/40141.
- 5-50179 P510 A21-111/40025.
- 5-50180 P531 A21-111/40025.
- 5-22578 P120 A212/41005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940; (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

(Sgd.) CARROLL D. HUDSON,

(Carroll D. Hudson)

Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants, Contracting Officer.

• Supplemental Contract.

This Supplemental Contract, entered into this 15th day of October, 1943, by The United States of America, here-

inafter called "the Government", represented by the Contracting Officers executing this contract, and Silas Mason Company, a corporation organized and existing under the laws of the State of Delaware, of the city of New York, in the State of New York, hereinafter called "the Contractor", Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract dated July 3, 1941, identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contracts dated April 11, 1942 and July 6, 1943 which Supplemental Contracts are identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4-Supplements 1 and 2, respectively, and by Change Orders No. 2, 3 and 5 dated May 5, 1943, May 26, 1943 and October 4, 1943, respectively; and

Whereas, the Original Contract has been so construed as not to carry out the original intent of the Contracting parties with respect to travel and subsistence of the Contractor's employees, with the result that the Contractor is not being paid those amounts which the Contracting parties intended and agreed would be paid; and

Whereas, the modification of the Original Contract, as amended, clarifying and restating the original intentions of the Contracting parties, made retroactive to the date of the Original Contract, will facilitate the prosecution of the war, and is pursuant to the provisions of the First War Powers Act of 1941, and Executive Order 9001; and

Whereas, the Government also desires to so modify the Original Contract, as amended, to incorporate the

terms of Change Orders 2, 3, and 5; to authorize the disposition of property and the modification of subcontracts and purchase orders; and to modify the clauses relating to fixed-fee, Walsh-Healey Act, transportation, communications, overhead expense, termination, insurance, renegotiation, convict labor, disputes, definitions, labor disputes, and anti-discrimination; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work and modifications under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

A. Section 1 of Article I-A of Title I is changed by adding at the end thereof the following:

The Contractor is authorized and shall, in accordance with the instructions of the Contracting Officer, load or reenvate at the Plant any Ammunition whether or not

specifically mentioned herein, in such quantities as may be directed by the Contracting Officer; Provided, however, that the Contractor shall not be obligated to load or renovate any types or quantities of ammunition which the facilities of said Plant may not be capable of loading or renovating.

B. Paragraph g. of Section 1 of Article I-E of Title I. is changed to read:

g. When preliminary drawings are approved by the Contracting Officer, prepare final designs, detailed working drawings and specifications in accordance with Government standards necessary for the effective coordination and efficient execution of the construction work and revise the drawings and specifications as required by the Contracting Officer. Unless otherwise directed or authorized by the Contracting Officer all drawings required to be furnished by the Contractor will be prepared in pencil on tracing cloth of approved quality by such methods and of such quality of workmanship as will permit the revision of such drawings for record purposes and the making of satisfactory reproductions thereof. Drawings shall be prepared in ink on linen only where satisfactory results cannot be obtained otherwise. The specifications shall be mimeographed to produce the number of copies required by the Contracting Officer. There shall be included in the specifications all provisions which the Contracting Officer may direct to have incorporated therein relating to the advertising, negotiating, awarding of contract, conditions under which the work shall be done, and any special provisions required by statute or existing War Department regulations or instructions.

C. Section 7 of Article IV-A of Title IV is changed to read:

7. a. In carrying out the work under this Title IV the Contractor is authorized to and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (who shall be subject to the control and constitute employees of the Contractor), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and of the finished products to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions.

b. The Contractor shall, as directed by the Contracting Officer's Representative, repair construction equipment for the Corps of Engineers; provided, however, that such repair work to be done does not necessitate substantial additional tooling up (other than the purchase of necessary perishable tools) or the purchase by the Contractor of any additional machines or equipment; provided, further, that such repair work provided for hereunder shall be performed at such time only when the capacity of the machine shop, which is to be used in the performance of such repair work, is not being utilized in the work of the Plant. The work of the Plant shall at all times have priority over the repair work to be done on construction equipment for the Corps of Engineers. All repair work for the Corps of Engineers on construction equipment shall be performed under an agreement that all risk of loss due to damage done by

accident or otherwise shall be borne by the Corps of Engineers. All work done and materials or parts furnished in connection with any repairs hereunder to the construction equipment of the Corps of Engineers shall be performed and furnished at cost insofar as is practicable to determine cost. The receipts from such work performed and materials furnished in the repair of such construction equipment shall be applied in reduction of the cost of the work under this contract.

c. The Contractor shall, as directed by the Contracting Officer's Representative, transport or cause to be transported, by subcontract or otherwise, any of the products of said Plant to such points within the continental United States as may be designated.

d. It is recognized that property (including without limitation machine tools and processing equipment, manufacturing aids, raw, manufactured, scrap and waste materials), title to which is or may hereafter become vested in the Government, will be used by or will be in the care, custody or possession of the Contractor in connection with the performance of this contract. With the approval in writing of the Contracting Officer (whether such approval is given prior to or after the giving of a notice of the termination of this contract for the convenience of the Government), the Contractor may transfer or otherwise dispose of such Government-owned property to such parties and upon such terms and conditions as the Contracting Officer may approve or ratify, or, with like approval by the Contracting Officer, the Contractor may itself acquire title to such property or any of it at a price mutually agreeable. The proceeds of any such transfer or disposition or the agreed price of any property, title to which is so acquired by the Contractor, shall be applied in reduction of any payments to

be made by the Government to the Contractor under this contract, or shall otherwise be paid in such manner as the Contracting Officer may direct.

e. With the approval of the Contracting Officer, the Contractor may modify a subcontract or purchase order under this contract to increase the price or extend more favorable terms to the subcontractor.

f. The Contractor shall, from time to time with the approval of the Contracting Officer, do all things necessary or incident to operating the Ammonia Nitrate Crystallizing facilities of the Plant to crystallize Ammonium Nitrate solution, and to coat same in accordance with the process hereby referred to as the Tennessee Valley Authority process, including, without limiting the generality of the foregoing, the reworking and coating of Ammonium Nitrate now in storage, the training of personnel incident thereto at Tennessee Valley Authority's plant or elsewhere, and the loading of same on cars in bags ready for shipment. Nothing in this paragraph f. shall be construed as requiring the Contractor to operate said Ammonium Nitrate facilities beyond the period the Contractor is operating the Plant.

D. Section 3 of Article IV-C of Title IV is changed to read:

3. A fixed-fee for continued operation provided in Section 4 of Article IV-A hereof, as follows: Three Hundred Seventy Thousand Dollars (\$370,000.00) for twelve (12) months operation, (June 8, 1943 through June 7, 1944) which fee shall constitute complete compensation for Contractor's services during continued operation, including profit, other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

E. Article IV-D of Title IV is changed to read:

**Article IV-D—Walsh-Healey Act.**

The representations and stipulations required by Section 1 of the Act of June 30, 1936 (Walsh-Healey Act, Public 846, 74th Congress) to be included in all contracts therein specified, shall apply to the operation of the Plant under this contract and are hereby incorporated and made a part of this contract for that purpose with the same force and effect as if fully set forth in this contract, subject to all applicable regulations, determinations, and exemptions of the Secretary of Labor now or hereafter in effect.

F. The title to Article V-A of Title V is changed to read:

**Article V-A—Reimbursement for Contractor's Expenditures and Payment of Predetermined Fixed Amounts.**

Q. The initial paragraph of Section 1 of Article V-A of Title V is changed to read:

1. The Contractor shall be reimbursed in the manner hereinafter described for such of its actual expenditures in the performance of the work under this contract, and paid the predetermined fixed amounts, as may be approved or ratified by the Contracting Officer, and as are included in but not limited to the following items:

H. Paragraph c. of Section 1 of Article V-A of Title V is changed to read:

c. Transportation, loading, unloading, and storage charges on materials, supplies, and equipment, including

expenses of removing rejected property under Article VII-D of Title VII hereof.

I. Paragraph d. of Section 1 of Article V-A/ of Title V. is changed to read:

d. (1) Transportation and Pullman and/or other transportation accommodation expenses of employees, (including officers) of the Contractor, as are actually incurred in connection with such work.

Reimbursement to the Contractor for such transportation and Pullman and/or other transportation accommodation expenses shall be limited to the costs as borne by the Contractor. Transportation by automobile on such required travel shall be reimbursed at the rate of Five Cents (\$.05) per mile as representing the actual cost of such transportation.

(2) The Contractor will, in addition to the reimbursement for transportation and Pullman and/or other transportation accommodation expenses provided for above, be paid as a predetermined fixed amount, and not by way of reimbursement, Six Dollars (\$6.00) per day, or for a fractional part thereof, per man in travel status of lieu of all other expenses pertaining to subsistence of such employees (including officers). The said sum of Six Dollars (\$6.00) has been predetermined by the Contracting Officer, as representative of the average proportionate share of the Contractor's subsistence costs applicable to the performance of the contract.

(3) Costs and expenses reimbursed to employees of the Contractor transferred to or from the Plant on account of transportation of themselves, their families and their household goods.

(4) All travel shall be either authorized or approved in writing by the Contracting Officer. Should the Contractor or any representative thereof remain in a travel status, in excess of six (6) days at any one time not including the time consumed in travel, the cost for such excess travel status shall be at the expense of the Contractor, unless otherwise ordered in writing by the Contracting Officer.

J. Paragraph p. of Section 1 of Article V-A of Title V is changed to read:

p. 1. The fixed amount of One Thousand Dollars (\$1,000.00) per month for each calendar month of operation, payable at the close thereof, subsequent to the commencement of the complete operation provided in Section 3 of Article IV-A of Title IV, as complete compensation, including all general overhead, for all services performed by the Contractor at its New York, N. Y. offices in connection with the work under Title IV hereof during the period this paragraph 1 is operative, except for the wages, salaries and transportation and traveling expenses of employees of the Contractor who devote full time to the work under such Title IV. The initial amount shall be payable at the close of the calendar month during which sum operation commences. Provided, however, that this paragraph shall become inoperative on June 8, 1943 and no payments shall accrue hereunder thereafter.

2. For the purposes of this paragraph p. of this Section 1 of Article V-A, the term "full time" shall be deemed, during the period paragraphs 1 and 2 of this paragraph p. are both operative, to refer to the time of employment of those employees engaged solely upon the work under this contract and who are carried on pay-

rolls separate from the Contractor's payrolls relating to its other business and not to employees of the Contractor engaged part time on the work under this contract and part time on the Contractor's other business.

K. Paragraph w. is added to Section 1 of Article V-A of Title V to read:

w. Payments made pursuant to paragraph e. of Section 7 of Article IV-A of Title IV.

L. Sections 5 and 6 of Article V-A of Title V are changed to read.

5. The Government reserves the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges.

6. No salaries of the Contractor's executive officers or partners, no part of the expense incurred in conducting the Contractor's main office or regularly established branch offices, and no overhead expenses of any kind of the Contractor's main office or regularly established branch offices, except as specifically authorized in Section 1 of this Article, shall be included in the cost of the work under this contract; nor shall any interest on capital employed or on borrowed money be included in the cost of the work.

M. Paragraph 2 of paragraph d. of Section 3 of Article V-B of Title V is changed to read:

2. The fixed-fee of Three Hundred Seventy Thousand Dollars (\$370,000.00) for continued operation provided for in Section 4 of Article IV-A of Title IV shall be paid in twelve (12) partial payments of Thirty Thousand Eight

Hundred Thirty-three Dollars and Thirty-three cents (\$30,833.33) each, less 10% of each such partial payment, the first such partial payment to be payable on the last working day of the calendar month during which the additional operation provided for in such Section 4 of Article IV-A of Title IV shall have commenced, and the remaining partial payments to be payable on the last working day of each of the next succeeding eleven (11) months.

N. Article VI-A of Title VI is changed to read as follows:

**Article VI-A—Termination by Government.**

1. The Government may terminate the work under this contract in whole or in part at any time by a notice in writing from the Contracting Officer to the Contractor. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the Contractor or which the Contractor may have against the Government.

2. Upon receipt of such notice the Contractor shall, unless the notice directs otherwise, complete the manufacture into finished product of all materials in process, immediately discontinue all work and the placing of all subcontracts for materials, facilities, supplies, and services in connection with the performance of this contract or part thereof terminated by said notice, and proceed to terminate promptly all existing subcontracts, insofar as such subcontracts are chargeable to this contract or part thereof terminated by said notice. The Contractor shall also take any and all steps necessary to vest in the Government any and all rights and benefits resulting to the

Contractor by reason of such termination, and the Contractor shall take any and all steps necessary to finally settle all matters in connection therewith (including protection of Government property and preparation thereof for removal or for storage) as may be required or approved by the Contracting Officer.

3. a. Thereafter the Contractor shall proceed with the settlement of his fixed-price subcontracts in accordance with the termination provisions thereof, if any, or, in the absence of such provisions, shall enter into negotiations with such fixed-price subcontractors, looking toward a negotiated settlement and an agreement upon cancellation charges, if any, resulting from the termination of cancellation of such subcontracts by reason of termination, in whole or in part, of this contract. The Contractor shall make every reasonable effort to arrive at a negotiated settlement in each such instance. Each such negotiated settlement shall be made expressly subject to the written approval of the Contracting Officer. Upon receipt of such written approval the amount of such settlement shall be paid by the Contractor unless payment direct by the Government is otherwise required. Approval of negotiated settlements of subcontracts shall be based upon such inquiry by the Contracting Officer as he deems reasonable under the circumstances.

b. The Contractor shall effect settlement and payment of each cost-plus-a-fixed-fee subcontract, unless payment direct by the Government is otherwise required, in accordance with the termination provision of such subcontract. In the event no termination provision is included in any such subcontract the Contractor shall make every reasonable effort to settle and terminate such subcontract and shall be reimbursed by the Government for all expenditures made in accordance with

the terms of such subcontract and not previously reimbursed by the Government. The Contractor shall also be reimbursed for any fixed-fee payments made by him on such terminated cost-plus-a-fixed-fee subcontracts, to the extent that such payments have not previously been reimbursed, it being recognized that equitable adjustments in such fixed-fees may be necessitated by such termination. Any such settlements or adjustments in fee shall be made expressly subject to the written approval of the Contracting Officer. Approval of such settlements or adjustments in fee shall be based upon such inquiry by the Contracting Officer as he deems reasonable under the circumstances.

c. The Contractor shall make every reasonable effort to effect settlement and payment (unless payment direct by the Government is otherwise required) of all other obligations, commitments and claims, the cost of which would be reimbursable in accordance with the provisions of this contract, that the Contractor, prior to said notice of termination may have undertaken or incurred in connection with the work terminated by said notice of termination. Such settlements shall be made expressly subject to the written approval of the Contracting Officer. Approval of such settlements shall be based upon such inquiry by the Contracting Officer as he deems reasonable under the circumstances.

d. In the event the Contractor, after diligent effort, is unable to effect a negotiated settlement as provided for in paragraphs a., b., or c. of this Section 3, or in the event any such settlement is disapproved by the Contracting Officer, and the Contractor is unable, by further negotiation, to effect a settlement acceptable to the Contracting Officer, the Government shall assume and become liable for the Contractor's liability under such

subcontract, obligation, commitment or claim and the Contractor shall execute and deliver to the Government all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government the rights and benefits of the Contractor under such subcontract, obligation, commitment or claim.

e. Any other provision of this Section 3 to the contrary notwithstanding, the Government shall assume and become liable to the Contractor for the amount of any final judgment rendered against the Contractor by a Court of competent jurisdiction determining the liability of the Contractor under any subcontract, obligation, commitment or claim, the cost of which would be reimbursable in accordance with the provisions of this contract, that the Contractor prior to said notice of termination may have undertaken or incurred in connection with the work terminated by said termination notice; Provided (1) that the Contracting Officer shall find that the Contractor in good faith made a reasonable attempt to negotiate an adjustment of such liability without litigation and (2) that the Contractor gave the Contracting Officer prompt notice of the initiation of the proceedings in which such judgment was rendered and had offered the Government control of the defense of the proceedings; Provided, further that there shall be added to the amount of such final judgment all costs of the Contractor in connection with said suit, including but not limited to, cost of litigation, attorney fees, accounting fees, and clerical expenses; Provided, further, that if at any time prior to final judgment a settlement is finally negotiated and approved in writing by the Contracting Officer, the Contractor shall pay the amount of such settlement and shall be reimbursed therefor and for all costs and expenses in connection therewith unless payment direct by the Government is otherwise required.

f. As a condition of any settlement by the Contractor as provided for in this Section 3, the Contractor shall obtain a release approved by the Contracting Officer as evidence that such payment constitutes complete and final settlement of the claim of the third party against the Contractor; Provided, that, with the approval of the Contracting Officer, such release may except any claims which the third party may have against the Contractor and which have not become liquidated at the time of such payment.

4. If this contract or any part thereof is terminated for the convenience of the Government, the Contractor will be paid all fixed-fees which have accrued at the date of termination and all fixed-fees, if any, accruing pursuant to Section 2 of this Article, less fixed-fee payments previously made hereunder. If the contract or any part thereof is terminated due to the fault of the Contractor, no additional payment on account of fixed-fees for the work terminated will be made after the effective date of the termination. In the event of partial termination, an equitable adjustment in the fixed-fee shall be made in cases where the circumstances warrant. Such adjustments shall be reduced to writing as an amendment to this contract prior to final settlement hereunder.

5. If this contract or any part thereof is terminated for the fault of the Contractor, the Contracting Officer may enter upon the premises for the purpose of completing the work so terminated, may take possession of any and all materials, tools, machinery, equipment and appliances, and may exercise all options, privileges, and rights in connection therewith, and may complete or employ any other person or persons to complete said work.

6. a. The Government shall reimburse the Contractor for all costs and expenses incurred pursuant to this Article in accordance with the provisions of Title V. Without limiting the generality of the foregoing, it is expressly understood and agreed that the following costs and expenses are included:

(1) Costs incurred by the Contractor in preventing or reducing loss resulting from termination and for the protection, removal, storage, transportation (including delivery costs resulting from directions of the Contracting Officer) of property in which the Government has an interest under this contract.

(2) Accounting, legal, litigation, clerical and other expenses in connection with the termination of this contract, or part thereof, and any subcontract hereunder;

(3) All sums paid to subcontractors or to third parties on account of termination; provided such payments have been approved or ratified by the Contracting Officer.

b. Also, the Government shall pay a fixed-fee for services of the Contractor in connection with the termination of this Contract, to be negotiated as soon after the services of the notice of termination as practicable. Such fee shall be provided for in writing as an amendment to this contract prior to final settlement hereunder. Such fixed-fee shall be based upon an estimate of the cost of the work under this Article agreed to by the Contractor and the Government. The Contractor shall proceed immediately with the prosecution of the work required under this Article pending agreement upon the fixed-fee to be paid therefor.

7. The obligation of the Government to make any of the payments to the Contractor or any subcontractor required by this Article shall be subject to any claims in connection with this contract which the Government may have against the Contractor.

8. Prior to final settlement the Contractor shall furnish the release referred to in Section 4 of Article V-B of Title V of this contract, when required.

9. Any other provision of this Article to the contrary notwithstanding, it is expressly understood and agreed that the work done by the Contractor pursuant to any notice of termination given under this Article or pursuant to this Article is part of the work under this contract, and that such work will be done and all payments in connection therewith will be made under and in accordance with the applicable terms of this contract, including but not limited to the terms providing for reimbursement advances, disputes and responsibility of the Contractor.

10. For the purposes of this Article the word "subcontract" is defined as any agreement by the Contractor with any third person which involves the furnishing of any materials, supplies, machinery, equipment, or services in connection with the performance, wholly or in part, or any of the work described in this contract. A "subcontractor" is any person with whom any such agreement is made.

O. Section 1 of Article VII-G of Title VII is changed to read:

1. a. Procure and thereafter maintain such bonds and insurance in such forms and in such amounts and for

such periods of time as the Contracting Officer may require, provided same are obtainable. Such bond or insurance policy shall contain an indorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

b. The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this Contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of Article V-A hereof, and the risk of which is then uninsured or in which the amount claimed exceed the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government of all Contractor's rights and claims against the Government, arising from or growing out of such asserted claims, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

c. The Contractor agrees that it will incorporate by reference in each cost-plus-a-fixed-fee subcontract made hereunder, subsequent to the approval date of the Sixth Supplement to this Contract, the terms and conditions of this prime contract regarding insurance and liability.

P. Section 9 is added to Article VII-G of Title VII to read:

9. Renegotiation pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

a. Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to the Contractor under this contract can be determined with reasonable certainty, the Fixed-fees specified in Article IV-C of Title IV hereof will be renegotiated to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for commencement thereof not later than one year after the close of the fiscal year of the Contractor within which completion of termination of the contract, as determined by the Secretary, occurs.

b. The Contractor will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

c. The Government shall retain from amounts otherwise due the Contractor, or the Contractor shall repay to the Government if paid to him, any amount of the Fixed-fees specified in Article IV-C found as a result of such renegotiation to represent excessive profits and not eliminated through reductions in Fixed-fees specified in Article IV-C or otherwise, as the Secretary may direct.

d. The Contractor will include in each subcontract described in paragraph f. (2) (ii) of this Section and in each subcontract for an amount in excess of \$100,000 described in paragraph f. (2) (i) of this Section, made by the Contractor under this contract, subsequent to the date of this Supplement, the following provision:

"Article ..... Renegotiation to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

"(1) Upon the written demand of the Secretary, at such period or periods when, in the judgment of the Secretary, the profits accruing to (subcontractor) ..... under this contract can be determined with reasonable certainty, the Secretary and (subcontractor) ....., will renegotiate the contract price to eliminate therefrom any amount found as a result of such renegotiation to represent excessive profits. The demand of the Secretary shall fix a place for renegotiation and a time for the commencement thereof not later than one year after the close of the fiscal year of the subcontractor within which completion or termination of the contract, as determined by the Secretary, occurs.

"(2) (Subcontractor) ..... will furnish to the Secretary such statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Secretary may prescribe, and will permit such audits and inspections of its books and records as the Secretary may request.

"(3) Any amount of the contract price found as a result of such renegotiation to represent excessive profits shall, as directed by the Secretary,—

(a) Be deducted by (contractor) ..... from payments otherwise due to (subcontractor) ..... under this contract; or

(b) Be paid by (subcontractor) ..... directly to the Government, if paid to him; or

(c) Be eliminated through reductions in the contract price or otherwise.

"(4) (Subcontractor) ..... agrees that (contractor) ..... shall not be liable to (subcontractor) ..... for or on account of any amount paid to the Government by (subcontractor) ..... or deducted by (contractor) ..... from payments otherwise due under this contract, pursuant to directions from the Secretary in accordance with the provisions of this Article. Under its contract with the Government, (contractor) ..... is obligated to pay or credit to the Government all amounts withheld by it from (subcontractor) ..... hereunder.

"(5) (Subcontractor) ..... agrees (a) upon direction of the Secretary, to include in any subcontract hereunder paragraphs (1) to (6) inclusive of this Article, and (b) to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this section, and (c) to repay to the Government the amount of any reduction in the contract price of any such subcontract which results from renegotiation thereof by the Secretary and which the Secretary directs (subcontractor) ..... to withhold from payments otherwise due under such subcontract and actually unpaid at the time (subcontractor) ..... receives such direction.

"(6) As used in this Article,—

(a) The term 'Secretary' means the Secretary of War or any duly authorized representative of the Secretary including the Contracting Officer.

(b) The term 'subcontract' means any purchase order, agreement or arrangement within the definition set forth in Section 403(a)(5) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, and not exempt under or exempted pursuant to that Act.

(c) The terms 'renegotiate' and 'renegotiation' have the same meaning as in Section 403(b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(d) The term 'this contract' means this contract as modified from time to time."

e. (1) The Contractor agrees to make no subdivisions of any contract or subcontract for the purpose of evading the provisions of this Article.

(2) If any renegotiation between the Secretary and any subcontractor pursuant to the provisions required by Section d. hereof results in a reduction of the contract price or fixed-fee of the subcontract, the Government shall retain from payments otherwise due to the Contractor, or the Contractor shall repay to the Government, as the Secretary may direct, the amount of such reduction which the Secretary directs the Contractor to withhold from payments otherwise due to the subcontractor under the subcontract and actually unpaid at the time the Contractor receives such direction.

f. As used in this Article—

(1) The term "Secretary" means the Secretary of War or any duly authorized representative of the Secretary, including the Contracting Officer.

(2) The term "subcontract" means (i) any purchase order or agreement to perform all or any part of the work, or to make or furnish any material, part, assembly, machinery, equipment or other personal property, required for the performance of this contract, or (ii) any contract or arrangement (other than a contract or arrangement between two contracting parties one of which parties is found by the Secretary to be a bona fide executive officer, partner, or full-time employee of the other contracting party), (A) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or subcontracts thereunder, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or (B) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring, a contract or contracts with a Department or a subcontract or subcontracts thereunder, unless exempt under or exempted pursuant to Section 403(i) of the Sixth Supplemental National Defense Appropriation Act of 1942, as amended.

(3) The terms "renegotiate" and "renegotiation" have the same meaning as in Section 403(b) of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended.

(4) The term "this contract" means this contract as modified from time to time.

**Q. Article VII-I of Title VII is changed to read:**

**Article VII-I—Convict Labor.**

The Contractor shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the Contractor or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished under this contract or any of the materials or supplies to be used in connection with the performance of this contract, directly or indirectly, from any Federal, State or territorial prison or prison industry; Provided, That such articles, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired by or employed or used by any private person, firm or corporation.

**A. Article VII-N of Title VII is changed to read:**

**Article VII-N—Disputes.**

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact which may arise under this contract, and which are not disposed of by mutual agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail a copy thereof to the Contractor at his address shown herein. Within 30 days from said mailing the Contractor may appeal in writing to the Secretary of War, whose written decision or that of his designated representative or representatives thereon shall be final and conclusive upon the parties hereto. The Secretary of War may, in his discretion, designate an individual, or individuals, other than the Contracting Officer, or a

board as his authorized representative to determine appeals under this Article. The Contractor shall be afforded an opportunity to be heard and offer evidence in support of his appeal. The president of the board, from time to time, may divide the board into divisions of one or more members and assign members thereto. A majority of the members of the board or of a division thereof shall constitute a quorum for the transaction of the business of the board or of a division, respectively, and the decision of a majority of the members of the board or of a division shall be deemed to be the decision of the board or of a division, as the case may be. If a majority of the members of a division are unable to agree on a decision or if within 30 days after a decision by a division, the board or the president thereof direct that the decision of the division be reviewed by the board, the decision will be so reviewed, otherwise the decision of a majority of the members of a division shall become the decision of the board. If a majority of the members of the board is unable to agree upon a decision, the president will promptly submit the appeal to the Under Secretary of War for his decision upon the record. A vacancy in the board or in any division thereof shall not impair the powers, nor affect the duties of the board or division nor of the remaining members of the board or division, respectively. Any member of the board, or any examiner designated by the president of the board for that purpose, may hold hearings, examine witnesses, receive evidence and report the evidence to the board or to the appropriate division, if the case is pending before a division. Pending decision of a dispute hereunder the Contractor shall diligently proceed with the performance of this contract. Any sum or sums allowed to the Contractor under the provisions of this Article shall be paid by the United States as part of the cost of the articles or work herein contracted for.

and shall be deemed to be within the contemplation of this contract.

S. Article VII-R of Title VII is changed to read:

**Article VII-R—Notice to Government of Labor Disputes.**

Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor will immediately give notice thereof to the Contracting Officer. Such notice shall include all relevant information with respect to such dispute.

T. Article VII-U of Title VII is changed to read:

**Article VII-U—Definitions.**

1. The term "Chief of Branch" refers to either the Chief of Ordnance or to the Chief of Engineers, dependent upon the particular function involved, as described in Section 4 below; and includes any person or board, other than the Contracting Officer, duly authorized to represent them respectively.

2. The term "Secretary of War" includes the Under Secretary of War and any person or board, other than the Contracting Officer, duly authorized to represent the Secretary of War or the Under Secretary of War.

3. For the signing of this contract, the term "Contracting Officer" means both the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers, and the Contracting Officer appointed by the Chief of Ordnance. For the

signing of any modification of this contract, the term "Contracting Officer" means the Contracting Officer appointed by the Chief of Ordnance (or a Contracting Officer designated as the duly authorized representative of the Ordnance Contracting Officer so appointed by the Chief of Ordnance), and, where the modification relates to the functions of the Corps of Engineers as described in Section 4 below, means, in addition, the Contracting Officer in the Office of the Chief of Engineers appointed for that purpose by the Chief of Engineers. For all other purposes, the term "Contracting Officer" refers either to the District Engineer of the United States Engineers District in which the contract work is being performed, or the Contracting Officer appointed by the Chief of Ordnance, dependent upon the particular function involved as described in Section 4 below; and includes their respective successor or duly authorized representatives.

4. The Corps of Engineers' functions are: Prior to acceptance of the project or any part thereof by the Ordnance Department as the Using service, the approval of the performance of all construction work and the acceptance thereof; the approval of the preparation of detailed plans and working drawings for roads, railroads, sewage systems, water systems, electrical generating plants and transmission lines, heating plants, non-manufacturing buildings (such as offices, general warehouses and garages); and the approval of such miscellaneous construction as may be requested by the Chief of Ordnance. The above described Contracting Officers representing the Corps of Engineers, shall have no further authority under the Contract with respect to any part of the project which has been accepted by the using service. The Ordnance Department's functions are: All functions other than the Corps of Engineers' functions set forth in the two preceding sentences.

**U. Article VII-V of Title VII is changed to read:**

**Article VII-V—Anti-Discrimination.**

1. The Contractor, in performing the work required by this Contract shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin.

2. The Contractor agrees that the provision of Section 1 above will also be inserted in all of its subcontracts made subsequent to the approval of this Supplement. For the purpose of the article a subcontract is defined as any contract entered into by the Contractor with any individual, partnership, association, corporation, estate, or trust, or with any business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this contract; provided, however, that a contract for the furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

V. The provisions of paragraphs a. and b. of paragraph 2 of Change Order No. 2 dated May 5, 1943 have been inserted as paragraph g. of Section 1 of Article I-E of Title I; and the provisions of Change Order No. 5 dated October 6, 1943 have been inserted as paragraph f. of Section 7 of Article IV-A of Title IV. Therefore, Change Orders No. 2, 3 and 5 are hereby superseded.

W. It is expressly understood and agreed that upon the execution and approval of this Sixth Supplemental Contract, paragraphs F., G. and I. hereof shall become effective retroactively as of the date of the Original Contract.

X. Except as herein provided the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

Y. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By **CARROLL D. HUDSON,**

(Carroll D. Hudson)

Lt. Col., Or. Dept., Executive  
Officer, Field Director  
Ammunition Plants  
(Contracting Officer appointed  
by the Chief of  
Ordnance.)

JJMcI

(Sgd.) By **O. P. EASTERWOOD, JR.,**

(O. P. Easterwood, Jr.)

WMM

Major, Corps of Engineers.  
(Contracting Officer appointed  
by the Chief of  
Engineers.)

**SILAS MASON COMPANY,**

(Contractor)

(Sgd.) By **R. L. TELFORD,**

Vice Pres.

500 5th Ave.,  
New York 18, N. Y.  
(Business Address.)

Two Witnesses as to Execution by the Contractor:  
(Sgd.) R. L. WILSON.

Box 1162,  
Shreveport, La.  
(Address.)

(Sgd.) KATHARINE MORELAND.

Box 1162,  
Shreveport, La.  
(Address.)

I, C. L. Taylor, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that R. L. Telford who signed this contract on behalf of the contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) C. L. TAYLOR,  
Assistant Secretary.

(Corporate Seal)

Due to change in identification system of modifications to contracts this Change Order is numbered 7, there being in existence Supplements 1, 4 and 6, and Change Orders 2, 3 and 5.

Parsons/ap.

Date: February 19, 1944.

Change Order No. 7.

Contract No. W-ORD-517, DA-W-ORD-4, as Amended.

**War Department—Ordnance Department.**

**Change Order**  
**to**  
**Cost Plus A Fixed Fee**  
**New Ordnance Facility.**  
**Construction and Operation Contract.**

**Contractor:** Silas Mason Company, New York, N. Y.

**Name and Location of Plant:** Louisiana Ordnance Plant, Minden, La.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended, the following additional work is hereby ordered:

a. Upon completion or upon receipt of a notice of termination, wholly or in part, of this contract, and whether such termination is for default, or for the convenience of the Government, the Contractor is hereby authorized to do and shall do all things necessary to make the Plant safe and free from explosive hazards, insofar as is reasonably possible to do so. The Contractor is hereby obligated to perform such work even though the notice of termination is silent as to placing the Plant in a safe and non-hazardous condition.

2. It is expressly understood and agreed that the foregoing is deemed to be part of the work under this Contract, as amended, and that the carrying out of said work will be done under, and in accordance with the applicable provisions of this Contract, as amended.

3. It is understood and agreed that in event of termination of this Contract, the Contractor may include the estimated cost of the work hereby ordered in the estimated cost of the work of terminating this Contract and that pursuant to the provisions of Article VI-A of Title VI of this Contract, as amended, it will be paid a fee thereon as provided in said Article VI-A. If this Contract is not terminated, but is completed, a separate fee will be negotiated to cover the work hereby ordered in lieu of a fee under Article VI-A of Title VI; provided, however, that the Contractor makes claim to the Contracting Officer for such fee within 30 days after completing this Contract and that an estimate of the cost of the work hereby ordered is submitted by the Contractor within said 30 day period.

4. Except as hereby changed, the terms and conditions of said Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order.

THE UNITED STATES OF  
AMERICA,

(Sgd.) By RAYMOND REBSAMEN,

(Raymond Rebsamen)

Lt. Col., Ord. Dept. Execu-  
tive Officer, Field Direc-  
tor of Ammunition Plants,  
Contracting Officer.

JJMCI

Receipt is hereby acknowledged of the above Change  
Order No. 7 to Contract No. W-ORD-517 DA-W-ORD-4,

dated July 3rd, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: Feb. 28th, 1944

**SILAS MASON COMPANY,**  
(Contractor)

(Sgd.) By **R. L. TELFORD.**

Parsons/ap.

Change Order No. 8.

Contract No. W-ORD-517, DA W-ORD-4, as amended.

All Communications Should Be Accompanied by Carbon Copy and Addressed to

Army Service Forces,  
Office of the Chief of Ordnance,  
Office of the Field Director of Ammunition Plants,  
3629 Lindell Boulevard,  
St. Louis 8, Missouri.

3 March 1944.

To Insure Prompt Attention in Replying Refer to No.  
Attention of OOSL—Legal Unit.

Silas Mason Company,  
Louisiana Ordnance Plant,  
Shreveport, Louisiana.

Re: Continued Operation.

Gentlemen:

Pending negotiations for a third year's operation of the Louisiana Ordnance Plant, the execution and approval

of a letter of award and the preparation, execution and approval of a formal supplement to Contract No. W-ORD-517 DA-W-ORD-4, as amended, providing for such continued operation, you are hereby authorized and directed, pursuant to the provisions of Article VII-C of Title VII of said contract, until notified to the contrary, to make such purchases of raw and manufactured materials, supplies, etc., necessary for such continued operation (third year), as though you had a formal supplement to said contract providing therefor, and, unless sooner notified to the contrary, upon completion of your second year's operation of said Plant, continue with the operation thereof, as directed from time to time by the Contracting Officer, in accordance with production schedules.

Any purchases and/or operation hereby authorized shall be carried on in accordance with all applicable terms and conditions of Contract No. W-ORD-517 DA-W-ORD-4, as amended, including, without limiting the generality of the foregoing, those relating to reimbursement for the work. A fixed-fee for any operation of said plant beyond June 7, 1944, will be negotiated. Funds are presently available for the foregoing work under Procurement Authorities:

5-9762 P210 A 210/40141.

5-9763 P210 A 210/40141.

5-50179 P510 A 21-111/40025.

5-50180 P531 A 21-111/40025.

5-22578 P120 A 212/41005.

Please indicate your acceptance by signing the three inclosed copies and returning the original and one of the carbon copies of same to this office.

For the Chief of Ordnance:

Yours very truly,  
(Sgd.) **RAYMOND REBSAMEN,**  
(Raymond Rebsamen)

Lt. Col., Ord. Dept. Execu-  
tive Officer, Field Direc-  
tor Ammunition Plants,  
Contracting Officer.

JJMcl

Receipt is hereby acknowledged of the above Change Order No. 8 to Contract No. W-ORD-517 DA-W-ORD-4, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: March 6th, 1944.

**SILAS MASON COMPANY,**  
(Contractor)

(Sgd.) By **R. L. TELFORD.**

Due to change in identification system of modifications to contracts this Supplement is numbered 9, there having been executed Supplements 1, 4 and 6, and Change Orders 2, 3, 5, 7 and 8.

Contract No. W-ORD-517 DA-W-ORD-4.

Supplement 9.

Approved: ....., 1944.

**L. H. CAMPBELL, JR.,**

Major General, Chief of Ordnance.

By **E. P. RUSSELL,**

Lt. Col., Ord. Dept.

**Supplemental Contract  
to  
Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction and Operation Contract.**

**War Department.**

**Contractor: Silas Mason Company.**

**Place: At or near Minden, Louisiana.**

**Supplemental Contract for: Additional operation (3rd year) and modification of provisions pertaining to fixed-fee, transportation and renegotiation.**

**No change is made in the Estimated Cost or Fixed-Fees by this Supplement except:**

**Estimated Cost under Title IV: (2nd year) \$15,800,-00000; (3rd year) \$28,303,000.00.**

**Fixed-Fee under Title IV: (3rd year) \$350,000.00.**

**Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.**

**The New Ordnance Facility, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same.**

**5-9762 P210 A 210/40141.**

**5-9763 P210 A 210/40141.**

5-50179 P510 A 21-111-40025.

5-50180 P531 A 21-111/40025.

5-22578 P130 A 212-41005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

### Supplemental Contract.

This Supplemental Contract, entered into this 25th day of May, 1944, by the United States of America, hereinafter called "the Government" represented by the Contracting Officers executing this contract, and Silas Mason Company, a corporation organized and existing under the laws of the State of Delaware, of the city of New York, in the State of New York, hereinafter called "the Contractor", Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract dated July 3, 1941, identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contracts dated April 11, 1942, July 6, 1943 and October 15, 1943, which Supplemental Contracts are identified by the Government as Contract No. W-

ORD-517 DA-W-ORD-4-Supplements 1, 4 and 6 respectively, and by Change Orders No. 2, 3, 5, 7 and 8 dated May 5, 1943, May 28, 1943, October 4, 1943, February 19, 1944 and March 3, 1944, respectively; and

Whereas, the Government now desires to further modify the Original Contract, as amended, to provide for additional operation (3rd year), and to change the clauses pertaining to fixed-fee, transportation and renegotiation; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions herein-after set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the above described modifications will facilitate the prosecution of the war;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

A. Section 1 of Article I-A of Title I is changed to read:

1. The New Ordnance Facility, hereinafter referred to as the "Plant", and designated as Louisiana Ordnance Plant, shall comprise a plant at or near Minden, La., upon a site to be furnished and made available by the Government, for the loading of fixed rounds, shells, bombs, boosters and fuses (hereinafter sometimes referred to as "Ammunition") including manufacture of smetal and of nitrate of ammonia from neutral nitrate of ammonia solution for the foregoing types of Ammunition, having an estimated daily capacity based on a twenty-four (24) hour day as follows:

(a) 95,000 Fixed Rounds 20mm. of equivalent, complete except for detonators;

(b) 8,400 Rounds 155mm. Shell, or equivalent, but without any other components;

(c) 2,880 100 lb. Bombs or equivalent together with auxiliary boosters only.

B. Section 4 of Article IV-A of Title IV is changed to read:

4. a. Upon written notice to the Contractor not less than ninety (90) days before the anticipated completion of the operation provided for in Section 3 next above, the Government may, at its option, authorize the continued operation of the Plant for an additional period of twelve (12) months and the Contractor shall undertake such continued operation under the terms and conditions of this contract applicable to the operation of the Plant (including those relating to the fixed-fee for such addi-

tional operation, which fee shall be that provided in Section 3 of Article IV-C, hereof).

b. Beginning June 8, 1944, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant for an additional period of twelve (12) months (June 8, 1944 to June 8, 1945). Any operation after June 7, 1945 shall be subject to mutual agreement after negotiation.

C. Paragraph g is added to Section 7 of Article IV-A of Title IV to read:

g. The Contractor is authorized to and shall, in accordance with the instructions of the Contracting Officer, load, renovate or rehabilitate at the Plant any ammunition or its components even though not specifically mentioned herein, in such quantities as may be directed by the Contracting Officer; provided, however, that the Contractor shall not be obligated to load, renovate, or rehabilitate any types or quantities of ammunition or its components which the facilities of said Plant may not be capable of loading, renovating or rehabilitating.

D. Article IV-B of Title IV is changed to read:

#### Article IV-B—Estimates.

It is estimated as of the date of the Original Contract that the cost of the work under this Title IV prior to the continued operation covered by the option therefor provided in paragraph a of Section 4 of Article IV-A hereof will be Twenty-Five Million One Hundred Thousand Dollars (\$25,100,000.00), exclusive of the Contractor's fee. It is estimated as of February 13, 1943 that the cost of the work provided for in the option contained in para-

graph a of Section 4 of Article IV-A of this Title IV will be approximately Fifteen Million Eight Hundred Thousand Dollars (\$15,800,000.0), exclusive of the Contractor's fee. It is estimated as of the date of the Ninth Supplement to this contract that the cost of the work provided for in paragraph b of Section 4 of Article IV-A of this Title IV (third year) will be Twenty-eight Million Three Hundred Three Thousand Dollars (\$28,303,000.00), exclusive of the Contractor's fee. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of these estimates. The estimated total costs set forth above are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

E. Section 3 of Article IV-C of Title IV is changed to read:

3. A fixed-fee for continued operation provided in paragraph a of Section 4 of Article IV-A hereof, as follows Three Hundred Seventy Thousand Dollars (\$370,000.00) for twelve (12) months operation, (June 8, 1943 through June 7, 1944) which fee shall constitute complete compensation for Contractor's services during continued operation, including profit, other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

F. Section 4 of Article IV-C of Title IV is changed to read:

4. A fixed-fee for the work provided for in paragraph b of Section 4 of Article IV-A hereof, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00), which fee shall constitute complete compensation for the

Contractor's services during such operation, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

G. Paragraph c of Section 1 of Article V-A of Title V is changed to read:

c. Transportation, loading, unloading, demurrage and storage charges on materials, supplies, cars and equipment, including expenses of removing rejected property under Article VII-D of Title VII hereof.

H. Paragraph (2) of paragraph d of Section 3 of Article V-B of Title V is changed to read:

(2.) The fixed-fee of Three Hundred Seventy Thousand Dollars (\$370,000.00) provided by Section 3 of Article IV-C for continued operation under paragraph a of Section 4 of Article IV-A of Title IV shall be payable in twelve (12) equal monthly installments of Thirty Thousand Eight Hundred Thirty-three Dollars and Thirty-three Cents (\$30,833.33) each, less 10% of each such installment. The first such installment shall be payable on the last working day of the calendar month during which the additional operation provided for in paragraph a of Section 4 of Article IV-A of Title IV shall have commenced and the remaining installments shall be payable on the last working day of the next succeeding eleven (11) calendar months.

I. Paragraph (3) is added to paragraph d of Section 3 of Article V-B of Title V to read:

(3.) The fixed-fee of Three Hundred Fifty Thousand Dollars (\$350,000.00) provided by Section 4 of Article IV-C of Title IV for additional operation under para-

graph b of Section 4 of Article IV-A of Title IV, shall be payable in twelve (12) equal monthly installments of Twenty-nine Thousand One Hundred Sixty-six Dollars and Sixty-six Cents (\$29,166.66) each, less ten percent (10%) of each such installment. The first such installment shall be payable on the 8th day of July, 1944, and a like installment shall be payable on the same day of each of the next succeeding eleven (11) months.

J. Section 9 of Article VII-G of Title VII is changed to read:

9. a. This contract shall be deemed to contain all the provisions required by subsection (b) of the Renegotiation Act as amended by Section 701 of the Revenue Act of 1943 (Public Law No. 235, 78th Congress, enacted February 25, 1944).

b. In compliance with said subsection (b) of the Renegotiation Act, the Contractor shall insert in the subcontracts specified in said subsection (b) which are executed subsequent to the date of this Ninth Supplemental Contract either the provisions of this Section or the provisions required by said subsection (b).

K. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

L. This Supplemental Contract shall be subject to the written approval of the Chief of Ordnance or his duly authorized representative and shall not be binding until so approved.

M. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By **RAYMOND REBSAMEN,**  
(Raymond Rebsamen)

Lt. Col., Ord. Dept., Execu-  
tive Officer, Field Direc-  
tor of Ammunition Plants.  
(Contracting Officer ap-  
pointed by the Chief of  
Ordnance.)

JJMcl

(Sgd.) By **O. P. EASTERWOOD, JR.,**  
(O. P. Easterwood, Jr.)  
Major, Corps of Engineers.  
(Contracting Officer ap-  
pointed by the Chief of  
Engineers.)

**SILAS MASON COMPANY,**  
(Contractor)

(Sgd.) By **R. L. TELFORD,**  
Vice President.

500 Fifth Avenue,  
New York, New York.  
Business Address.

Two Witnesses as to Execution by the Contractor:  
(Sgd.) H. H. HAGGARD.

Minden, La.  
Address:

(Sgd.) RUTH J. MacLEAD.

Shreveport, Louisiana.  
Address:

I, R. T. Buffington, certify that I am the Assistant Secretary of the Corporation named as Contractor herein, that R. L. Telford who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) R. T. BUFFINGTON.

(Corporate Seal)

Due to change in identification system of modifications to Contracts this Change Order is numbered 10, there having been executed Supplements 1, 4, 6 and 9, and Change Orders 2, 3, 5, 7 and 8.

Parsons/111.

Date: 17 June 1944.

Change Order No. 10.

Contract No. W-ORD-517 DA-W-ORD-4, as Amended.

**War Department—Ordnance Department.**

**Change Order  
to  
Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction and Operation Contract.**

**Contractor:** Silas Mason Company, New York, New York.

**Name and Location of Plant:** Louisiana Ordnance Plant, Minden, La.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended, the following additional work is hereby ordered:

a. The Contractor is authorized to prepare such engineering studies as may be requested or approved by the Contracting Officer.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract W-ORD-517 DA-W-ORD-4, as amended.

3. There is no appreciable change in the estimated cost of the Contractor's services under said Contract and no change is made in the fixed-fee. No change in the time required for performance is involved.

4. Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with

equal force and effect in carrying out the provisions of this Change Order No. 10.

THE UNITED STATES OF  
AMERICA,

(Sgd.) By T. C. GERBER,

(T. C. Gerber)

Colonel, Ord. Dept. Field  
Director of Ammunition  
Plants, Contracting Of-  
ficer.

WDW

Receipt is hereby acknowledged of the above Change Order No. 10 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: June 26th, 1944.

SILAS MASON COMPANY,  
(Contractor)

(Sgd.) By R. L. TELFORD,  
V. P.

Contract No. W-ORD-517 DA-W-ORD-4.

Modification No. 11.

10 March 1944.

Fee Adjustment Agreement.

To Cost-Plus-A-Fixed-Fee Contract No. W-ORD-517 DA-W-ORD-4, dated the 3rd day of July, 1941, between the United States of America and Silas Mason Company, New York, N. Y., for architect-engineer services, construction of a new ordnance facility and installation of

equipment therein, procuring production equipment, and options for training key personnel for and operating a new ordnance facility for the loading of fixed rounds, shells, bombs, fuzes and boosters at or near Minden, Louisiana.

Whereas, the Contractor's fixed fee stipulated in Title I of the contract mentioned above is based upon the understanding that the Contractor will subcontract such portions of the work under said contract as may be approved by the Contracting Officer; and

Whereas, the Contractor named above has subcontracted the following described work:

(a) Specialized tests usually performed by commercial testing laboratories, at an estimated cost of \$7,097.

(b) Minor testing services and inspection of concrete and asphalt, at an estimated cost of \$7,916.

Now, Therefore, subcontracting of the above-mentioned work is hereby approved, and as a condition to such approval, it is determined and found by the Contracting Officer, and agreed to by the parties to said contract, that a decrease of \$530.00 in the fixed fee provided in said contract represents an equitable adjustment.

The foregoing will result in a change in the Contractor's fixed fee as follows:

Decrease in Contractor's fixed fee under Title I by reason of this fee adjustment agreement \$530.00.

**UNITED STATES OF  
AMERICA,**

By **WILLIAM A. DAVIS,**  
(William A. Davis)

Lt. Col., Corps of Engineers,  
District Engineer. (Con-  
tracting Officer appointed  
by the Chief of Engi-  
neers.)

By **JAMES H. ELLETT,**  
(James H. Ellett)

Major, Ord. Dept., Exec.  
Officer, Field Director of  
Ammunition Plants.  
(Contracting Officer ap-  
pointed by the Chief of  
Ordnance.)

JJMcl

Agreed to and accepted .. day of ..... 1944.

**SILAS MASON COMPANY,**  
(Contractor)

By .....  
Title .....

Witnesses as to signature of Contractor:

.....

.....  
(Address.)

.....

.....  
(Address.)

### Certification.

I, ....., do hereby certify that I am the duly qualified ..... of the corporation named herein as Contractor; that ..... who signed this fee adjustment agreement on behalf of said corporation was then ..... of said corporation; that said fee adjustment agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

In Witness Whereof, I have hereunto affixed my hand and the seal of the ..... this .. day of ....., 1944.

.....  
(Corporate Seal)

Due to change in identification system of modifications to Contracts, this Change Order is numbered 12, there having been executed Supplements 1, 4, 6 and 9, and Change Orders 2, 3, 5, 7, 8 and 10. (Modification No. 11 pending.)

Parsons/ap.

Date 28 July 1944.

Change Order No. 12.

Contact No. W-ORD-517 DA-W-ORD-4, as amended.

## War Department—Ordnance Department.

Change Order  
toCost-Plus-A-Fixed-Fee New Ordnance Facility  
Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

Name and Location of Plant: Louisiana Ordnance Plant, Minden, La.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended, the following additional work is hereby ordered:
  - a. Pending a formal supplement providing for procurement of equipment and operation of certain additional facilities, the Contractor shall procure such production equipment, not furnished by the Government, as will be required by the conversion of the minor caliber line of the Plant for the loading of mines AT6 and complete rounds M42A1 for 3" guns, the modification of the bomb line to provide capacity to load an additional 30,000 500# TNT bombs per month, and the construction of a new load line capable of loading 80,000 500# bombs per month, as may be approved or ratified by the Contracting Officer. The Contracting Officer shall advise the Contractor what production equipment the Government will furnish, if any.
2. A site letter has been approved covering said work and funds are available therefor. It is expressly understood and agreed that the foregoing is deemed to be

a part of the work under said Contract No. W-ORD-517 DA-W-ORD-4, as amended.

3. It is estimated that the total cost of the work under paragraph 1. a. hereof will be approximately \$611,000.00. It is estimated that the period of time required to perform said work will be two months. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of this estimate. Any fixed fee for the foregoing work will be negotiated as a part of said formal supplement.

4. Except as hereby changed, the terms and conditions of the Original Contract as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 12.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By **JAMES H. ELLETT,**  
(James H. Ellett)

Major, Ord. Dept., Execu-  
tive Officer, Field Direc-  
tor of Ammunition Plants,  
Contracting Officer.

JJMcl

Receipt is hereby acknowledged of the above Change Order No. 12 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: July 31, 1944.

**SILAS MASON COMPANY,**  
(Contractor)

(Sgd.) By **R. L. TELFORD.**

Due to change in identification system of modifications to Contracts, this Change Order is numbered 13, there having been executed Supplements 1, 4, 6 and 9, and Change Orders 2, 3, 5, 7, 8, 10 and 12. (Modification No. 11 pending.)

Parsons/ap.

Date: 22 September 1944.

Change Order No. 13.

Contract No. W-ORD-517 DA-W-ORD-4, as Amended.

War Department—Ordnance Department.

Change Order to  
Cost-Plus-A-Fixed-Fee New Ordnance Facility  
Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

Name and Location of Plant: Louisiana Ordnance Plant, Minden, La.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended, the following additional work is hereby ordered:

a. Pending the preparation and execution of a formal supplement, the Contractor shall furnish such management service, procure such production equipment as is not furnished by the Government, and inspect the installation of the production equipment, as may be ap-

proved or ratified by the Contracting Officer, as will be required by the modification of the Group II-A line at the Plant to provide capacity for loading 300,000 T6E1 mines per month. The Contractor is advised that the construction will be done under the supervision of the Corps of Engineers by collateral contracts.

2. A site letter has been approved covering said work and funds are available therefor. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract No. W-ORD-517 DA-W-ORD-4.

3. This Change Order will involve an appreciable increase in the cost of the work. Therefore, as soon as a detailed estimate is available it will be furnished to the Ordnance Department by the Contractor. It is estimated that the period of time required to perform said work will be approximately three months. Any fixed fee for the foregoing work will be negotiated as a part of said formal supplement.

4. Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 13.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By O. P. EASTERWOOD, JR.,  
(O. P. Easterwood, Jr.)

Major, Corps of Engineers.

(Contracting Officer appointed by the Chief of Engineers.)

W.M.M.  
O.F.S.

(Sgd.) By JAMES H. ELLETT,  
(James H. Ellett)

Major, Ord. Dept., Execu-  
tive Officer, Field Direc-  
tor of Ammunition Plants.  
(Contracting Officer ap-  
pointed by the Chief of  
Ordnance.)

JJMcl

Receipt is hereby acknowledged of the above Change  
Order No. 13 to Contract No. W-ORD-517 DA-W-ORD-4,  
dated July 3, 1941, as amended, and the Contractor here-  
by accepts the terms and conditions thereof.

Date: Oct. 2nd, 1944.

SILAS MASON COMPANY,  
(Contractor)

(Sgd.) By R. L. TELFORD.

Parsons/ap.

Change Order No. 14.

Contract No. W-ORD-517 DA-WORD-4, as Amended.

Army Service Forces,  
Office of the Chief of Ordnance,  
Field Director of Ammunition Plants,  
St. Louis 8, Missouri.

12 January 1945.

In Reply Refer to: SPOLY-G Legal Section.

Silas Mason Company,  
Louisiana Ordnance Plant,  
Shreveport 1, Louisiana.

Re: Additional Facility Expansion.

Gentlemen:

Site letters have been approved authorizing construc-  
tion of five additional warehouses at the Plant with a

total of approximately 60,000 sq. ft. of space, the installation of equipment in two load lines to retool for items not currently being produced, and the construction of additional railroad facilities at the Plant.

Therefore, pending the negotiation and execution of a formal supplement to Contract No. W-ORD-517 DA-W-ORD-4, as amended, covering such modification, you are hereby authorized and directed, pursuant to the provisions of Article VII-C of Title VII thereof, to furnish such management service, procure such production equipment as is not furnished by the Government, inspect the installation of said equipment and operate said facilities, as may be approved or ratified by the Contracting Officer as will be necessary to provide for such facility expansion and for the operation thereof. Any architect-engineering, construction or installation of equipment will be done under the supervision of the Corps of Engineers by collateral contracts.

It is expressly understood and agreed that the work described herein is deemed to be a part of the work under said Contract No. W-ORD-517 DA-W-ORD-4, as amended; and that it shall be governed by all the applicable provisions of said contract, including, without limiting the generality of the foregoing, those pertaining to reimbursement.

The work authorized by this Change Order may involve an appreciable increase in the cost of the work. Therefore, it is understood and agreed that as soon as a detailed estimate of the amount of the work involved is available it will be furnished to the Ordnance Department by the Contract. Any fixed fee for the foregoing work will be negotiated as a part of said supplement.

Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 14.

If this Change Order is satisfactory, please so indicate by signing the three inclosed copies and returning one of the carbon copies and the original of same to this office for conforming and distributing.

For the Chief of Ordnance:

Yours very truly,

(Sgd.) S. M. STROHECKER, JR.,

(S. M. Strohecker, Jr.)

Colonel, Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer.

JJMcl

Receipt is hereby acknowledged of the above Change Order No. 14 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: Jan. 15th, 1945.

SILAS MASON COMPANY,

(Contractor)

(Sgd.) By R. L. TELFORD,

Vice Pres.

Parsons/ap.

Change Order No. 15.

Contract No. W-ORD-517 DA-W-ORD-4, as Amended.

Army Service Forces,  
Office of the Chief of Ordnance,  
Field Director of Ammunition Plants,  
St. Louis 8, Missouri.

30 March 1945.

In Reply Refer to: SPOLY-G Legal Section.

Silas Mason Company,  
Louisiana Ordnance Plant,  
Shreveport, Louisiana.

Re: Continued Operation.

Gentlemen:

Pending the execution and approval of a formal supplement to Contract No. W-ORD-517 DA-W-ORD-4, as amended, providing for continued operation of the Louisiana Ordnance Plant, you are hereby authorized and directed, pursuant to the provisions of Article VII-C of Title VII of said contract, until notified to the contrary, to make such purchases of raw and manufactured materials, supplies, etc., necessary for such continued operation as though you had a formal supplement to said contract providing therefor, and, unless sooner notified to the contrary, upon completion of the work provided for in paragraph b. of Section 4 of Article IV-A of Title IV of said contract, continue with the operation of said plant as directed from time to time by the Contracting Officer, in accordance with the production schedules.

All purchases and operation hereby authorized shall be carried on in accordance with all applicable terms and conditions of Contract No. W-ORD-517 DA-W-ORD-4, as amended, including, without limiting the generality of the foregoing, those relating to reimbursement for the

work. A fixed-fee for any operation of said plant beyond June 7, 1945, will be negotiated. Funds are presently available for the foregoing work under Procurement Authority

505-2762 P120 A212/51005.

Please indicate your acceptance by signing the three inclosed copies and returning the original and one of the carbon copies of same to this office.

For the Chief of Ordnance:

Yours very truly,  
(Sgd.) JOHN K. WILLARD,  
(John K. Willard)

Major, Ord. Dept., Executive Officer, Field Director of Ammunition Plants,  
Contracting Officer.

P.G.P.

Receipt is hereby acknowledged of the above Change Order No. 15 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: April 2, 1945.

SILAS MASON COMPANY;  
(Contractor)

(Sgd.) By R. L. TELFORD,  
Vice President and General Manager.

Due to change in identification system of modifications to contract this Supplement is numbered 16, there having been executed Supplements 1, 4, 6 and 9 and Change

Orders 2, 3, 5, 7, 8, 10, (Mod. 11 unilateral), 12, 13, 14 and 15.

Contract No. W-ORD-517 DA-W-ORD-4.

Supplement No. 16.

**Cost-Plus-A-Fixed-Fee  
New Ordnance Facility  
Construction and Operation Contract.**

**War Department.**

Approved: 11 July, 1945.

**L. H. CAMPBELL, JR., F.F.H.**

**Lt. General, Chief of Ordnance.**

(Sgd.) By **E. P. RUSSELL,**

**(E. P. Russell)**

**Colonel, Ord. Dept.**

**Contractor: Silas Mason Company, New York, N. Y.**

**Place: At or near Minden, Louisiana.**

**Supplemental Contract for: Additional facilities and continued operation (4th year); modification of provisions pertaining to procurement of equipment, fixed fees, title and final payment; and addition of clauses pertaining to consultant service and destruction of property.**

**This Supplement makes no change in the estimated cost or fixed fees except:**

**Estimated Cost under Title II: Increased \$572,475.00.**

**Fixed Fee under Title II: Increased \$1.00.**

**Estimated Cost under Title IV: (4th year) \$29,985,-590.00.**

**Fixed Fee under Title IV: (4th year) \$350,000.00.**

**Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.**

The equipment, services and supplies to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authorities, the available balances of which are sufficient to cover the cost of the same:

505-2762 P120 A212/51005.

505-2419 P120 A212/51005.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended; the Act approved December 18, 1941 (Public Law 354, 77th Cong.) and Executive Order No. 9001 dated December 27, 1941.

(Sgd.) JOHN K. WILLARD,

(John K. Willard)

Lt. Col., Ord. Dept., Executive Officer, Field Director of Ammunition Plants, Contracting Officer.

### **Supplemental Contract.**

This Supplemental Contract, entered into this 30th day of May, 1945, by The United States of America,

hereinafter called "the Government", represented by the Contracting Officers executing this Contract, and Silas Mason Company, a corporation organized and existing under the laws of the State of Delaware, of the city of New York, in the State of New York, hereinafter called "the Contractor", Witnesseth That:

Whereas, there is now in force between the parties hereto a certain contract dated July 3, 1941, identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4 and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, said Original Contract has been amended by Supplemental Contracts identified by the Government as Contract W-ORD-517 DA-W-ORD-4, Supplements 1, 4, 6 and 9, and Change Orders 2, 3, 5, 7, 8, 10, (Mod. 11 unilateral), 12, 13, 14 and 15; and

Whereas, the Government now desires to further modify the Original Contract, as amended, to provide for additional facilities and continued operation (4th year); to modify the clauses pertaining to procurement of equipment, fixed fees, title and final payment; and to add provisions pertaining to consultant service and destruction of property; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions hereinafter set out; and

Whereas, the accomplishment of the above described work and modifications under a cost-plus-a-fixed-fee contract, entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the above described work; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

A. Article I-A of Title I is changed to read:

**Article I-A—Description of New Ordnance Facility.**

1. The New Ordnance Facility hereinafter referred to as the "Plant" and designated as Louisiana Ordnance Plant, shall comprise a plant at or near Minden, Louisiana, upon a site furnished and made available by the Government for the loading of fixed, semi-fixed, and unfixed rounds, shells, bombs, mines, boosters and fuzes, (hereinafter sometimes referred to as ammunition), including the manufacturing of amatol and nitrate of ammonia from neutral nitrate of ammonia solution for the foregoing types of ammunition, having an estimated monthly capacity based on twenty-six (26) working days of twenty-four (24) hours per day as follows:

Line C: 2,000,000 Rounds Minor Caliber, or 1,000,000 Rounds Medium Caliber—TNT loaded, or 500,000 Anti-tank Mines;

Line D: 2,000,000 Rounds Minor Caliber, or 1,000,000 Rounds Medium Caliber—TNT loaded, or 500,000 Rounds Medium Caliber—press loaded;

Line E: 100,000 100# Bombs, or equivalent;

Line F: 120,000 250# Bombs, or equivalent;

Line S: 500,000 155mm shell, or equivalent;

Line G: 400,000 M56 Fuze, or equivalent;

Line H: 400,000 M56 Fuze, or equivalent, or 20,000 155mm shell, or equivalent;

Line J: 400,000 M104 Booster, or equivalent;

Line K: 200,000 Fuzes;

Line N: 7,500,000 Pounds Nitrate of Ammonia.

2. Said plant shall consist of loading buildings, nitrate of ammonia evaporating and graining buildings, administration buildings, shops, railroads, roads, steam lines, air lines, electric lines, telephone lines, fences, lighting power houses, dormitories, water and sewer system, staff dwellings, cafeterias, guard headquarters, fire fighting equipment and provisions for the housing thereof, inert storage warehouses, ammonium storage warehouse, explosive and ammunition igloo storage magazines, chemistry and gage laboratories, burning grounds, demolition and proof testing pits and areas, together with other buildings and equipment necessary or appropriate for a loading plant of the approximate capacity aforesaid, with storage buildings adequate for about 30 days' supply of incoming materials and about 60 days' production of finished product.

3. Said Plant shall conform, insofar as is practicable, with typical designs, drawings, specifications, details,

standards or instructions which are on file in the offices of the Chief of Ordnance and the Chief of Engineers and which shall be promptly furnished to the Contractor, or which will be furnished hereafter by the Contracting Officer; Provided, however, that no portion of said Plant shall consist of a permanent type of construction unless specifically authorized in advance by the Secretary of War; and Provided further, that nothing herein shall prevent the use of a type of construction sufficiently substantial for the use intended, in the judgment of the Contracting Officer, as evidenced by his approval of the plans and specifications.

B. The following is added as Article I-H to Title I:

**Article I-H—General.**

1. Anything in this Title I to the contrary notwithstanding, any architect-engineering or construction required in connection with the facilities added to the Plant by Supplement Sixteen (conversion of minor caliber line for the loading of mines AT6 and complete rounds M42A1 for three inch guns; modification of bomb line to increase capacity for loading 500# TNT bombs by 30,000 per month; construction of new load line capable of loading 60,000 500# bombs per month; modification of Group II-A line to provide capacity for loading 300,000 T6E1 mines per month; construction of five warehouses with a total of approximately 60,000 square feet of space; installation of equipment in two load lines to retool for the loading of new items; and construction of additional railroad facilities at the Plant) will be done by collateral contract under the supervision of the Corps of Engineers.

C. Section 1 of Article II-A of Title II is changed to read:

1. The Contractor shall, in the shortest reasonable time, determine the production equipment requirements for the Plant and shall, subject to the approval of the Contracting Officer, thereupon proceed to do all things necessary and incident to the procurement of the production equipment required, and inspect the installation of such equipment.

D. Article II-B of Title II is changed to read:

**Article II-B—Estimates.**

1. It is estimated (as of the date of the Original Contract) that the total cost of the work covered by this Title II as described in the Original Contract, will be approximately Three Million One Hundred Thirty-eight Thousand Two Hundred Dollars (\$3,138,200.00), exclusive of the Contractor's fee.

2. It is estimated that the total cost of the work added to this Title II by Supplement Sixteen to this Contract (procurement of such production equipment as is necessary for the (1) conversion of minor caliber line for the loading of mines AT6 and complete rounds M42A1 for three inch guns; (2) modification of bomb line to increase capacity for loading 500# TNT bombs by 30,000 per month; (3) equipping of new load line capable of loading 60,000 500# bombs per month; (4) modification of Group II-A line to provide capacity for loading 300,000 T6E1 mines per month; (5) equipping of five warehouses with a total of approximately 60,000 square feet of space; and (6) equipping of two load lines to retool for the loading of new items) will be Five Hundred

Seventy-two Thousand Four Hundred Seventy-five Dollars (\$572,475.00), exclusive of the Contractor's fee, and that said work will be completed within six months from January 12, 1945.

3. It is expressly understood, however, that neither the Contractor nor the Government guarantees the correctness of any of the foregoing estimates. The estimated total costs set forth herein are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

E. The following is added as Section 3 of Article II-C of Title II:

3. A fixed-fee in the amount of One Dollar (\$1.00) which shall constitute complete compensation for the Contractor's services in connection with the work added to this Title II by Supplement Sixteen to this Contract, including profit other than that included in the prices quoted pursuant to Section 2 of Article II-A of Title II hereof.

F. Paragraph b of Section 4 of Article IV-A of Title IV is changed to read:

b. Beginning June 8, 1944, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant for an additional period of twelve (12) months (June 8, 1944 to June 8, 1945).

Q. The following is added as paragraph c to Section 4 of Article IV-A of Title IV:

c. Beginning June 8, 1945, the Contractor shall, as directed from time to time by the Contracting Officer,

operate the Plant for an additional period of twelve (12) months (June 8, 1945 to June 8, 1946). Any operation after June 7, 1946 shall be subject to mutual agreement after negotiation.

H. The following are added as paragraphs h and i to Section 7 of Article IV-A of Title IV:

h. The Contractor is authorized to prepare such engineering studies as may be requested or approved by the Contracting Officer.

i. The Contractor shall advise and consult with the Contracting Officer charged with the administration of the collateral contracts for the architect-engineering and construction of the facilities added to the Plant (as described in Title I) by Supplement Sixteen to this Contract or for any collateral contracts for architectural and engineering services in procuring or in supervising the installation of any manufacturing and service equipment required therefor.

I. Article IV-B of Title IV is changed to read:

#### Article IV-B—Estimates.

1. a. It is estimated as of the date of the Original Contract that the costs of the work under this Title IV prior to the continued operation covered by the option therefor provided in paragraph a of Section 4 of Articles IV-A hereof will be Twenty-five Million One Hundred Thousand Dollars (\$25,100,000.00) exclusive of the Contractor's fee.

b. It is estimated as of February 13, 1943 that the cost of the work provided for in the option contained in para-

graph a of Section 4 of Article IV-A of this Title IV will be approximately Fifteen Million Eight Hundred Thousand Dollars (\$15,800,000.00), exclusive of the Contractor's fee.

c. It is estimated as of May 25, 1944 that the cost of the work provided for in paragraph b of Section 4 of Article IV-A of this Title IV (third year) will be Twenty-eight Million Three Hundred Three Thousand Dollars (\$28,303,000.00), exclusive of the Contractor's fee.

d. It is estimated as of May 16, 1945, that the cost of the work provided for in paragraph c of Section 4 of Article IV-A of Title IV (fourth year) will be Twenty-nine Million Nine Hundred Eighty-five Thousand Five Hundred Ninety Dollars (\$29,985,590.00), exclusive of the Contractor's fee.

2. It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of these estimates. The estimated total costs set forth above are based upon estimates agreed to by both the Government and the Contractor, copies of which are on file in the Office of the Chief of Ordnance.

J. The following is added as Section 5 of Article IV-C of Title IV:

5. A fixed-fee for the work provided for in paragraph c of Section 4 of Article IV-A hereof, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00), which fee shall constitute complete compensation for the Contractor's services during such fourth year's operation, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV:

K. Paragraph m of Section 1 of Article V-A of Title V is changed to read:

m. In connection with the work under Title IV only, extra compensation to employees, discontinuance wages and charges under welfare and other employee relations plans maintained by the Contractor; Provided that the Government shall be chargeable therefor only insofar as the same are consistent with the general employee relations policies existing throughout the Contractor's organization, or are incurred pursuant to agreement made as a result of collective bargaining with the representatives of employees, or are expressly authorized in writing by the Contracting Officer.

L. Paragraph (4) is added to paragraph d of Section 3 of Article V-B of Title V to read:

(4.) The fixed-fee of Three Hundred Fifty Thousand Dollars (\$350,000.00) provided in Section 5 of Article IV-C of Title IV for the fourth year's operation under paragraph c of Section 4 of Article IV-A of Title IV shall be payable in twelve (12) equal monthly installments of Twenty-nine Thousand One Hundred Sixty-six Dollars Sixty-six Cents (\$29,166.66) each. The first such installment shall be payable on the 8th day of July 1945 and a like installment shall be payable on the same day of each of the next succeeding eleven (11) months.

M. Section 4 of Article V-B of Title V is changed to read:

4. a. Upon completion of the work under Titles I and II, and under Sections 1, 2 and 3 and paragraphs

5. Paragraph (4) is added to paragraph d of Section a and b of Section 4 of Article IV-A of Title

IV, and again upon the completion of the work under paragraph c of Section 4 of Article IV-A of Title IV, the Government shall pay the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness.

b. Prior to final payment and as a condition thereof the Contractor shall furnish the Government with a release of all claims against the Government arising under and by virtue of this contract, other than (1) such claims, if any, as may be specifically excepted by the contractor from the operation of the release in stated amounts to be set forth therein, or in estimated amounts where the amounts are not susceptible of exact statement, and (2) any claim based upon responsibility of the Contractor to third parties arising out of the performance of this contract not known to the Contractor at the time of furnishing the release.

c. Even though the existence or amount thereof shall not be determined until after the furnishing of such release as is described next above, reimbursement to be made for payments made by the Contractor shall include, along with wages and salaries otherwise reimbursable, all additional amounts determined (either by approval of the Contracting Officer or by litigation as hereinafter provided) to be due and payable for overtime compensation and allowances under local, state or Federal laws in connection with such wages and salaries.

d. The Contractor shall promptly notify the Contracting Officer of any claims of the type described in para-

graph (2) of paragraph b. of this Section 4 above which are asserted subsequent to the execution of the release.

e. In the event the Contracting Officer shall determine that the best interests of the Government require that the Contractor initiate or defend litigation in connection with claims of third parties arising out of the performance of this contract, the Contractor will proceed with such litigation in good faith and the costs and expenses of such litigation, including judgments and Court costs, allowances rendered or awarded in connection with suits for wages, overtime or salaries, and reasonable attorney's fees for private counsel when the Government does not furnish Government counsel, shall be reimbursable under the contract. The term "litigation" shall include suits at law or in equity and proceedings before any Governmental agency having jurisdiction over the claim.

N. Article VII-D of Title VII is changed to read:

Article VII-D—Title.

Title to all materials, tools, machinery, equipment and supplies for which the Contractor shall be entitled to reimbursement under this contract shall vest in the Government upon delivery at the Plant site or at such other point or points as the Contracting Officer may designate in writing; Provided that the right of final inspection and acceptance or rejection of such materials, tools, machinery, equipment and supplies at such place or places as he may designate in writing is reserved to the Contracting Officer; Provided, further, that upon such final inspection, the Contractor shall be given written notice of acceptance or rejection as the case may be. In the event of rejection, the Contractor shall be respon-

sible for the removal of the rejected property within a reasonable time.

O. The following is added as Section 10 to Article VII-G of Title VII:

10. Upon the happening of loss or destruction of or damage to Government property caused by:

Fire; lightning; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake, or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval or air forces of the United States in resisting enemy attack,

the contractor shall communicate with the contracting officer and with the Loss and Salvage Organization now or hereafter designated by the contracting officer and, with the assistance of that organization employed by the contractor to perform services in accordance with instructions or regulations of the Government (unless the contracting officer directs that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the contracting officer a statement of: (1) the lost, destroyed and damaged Government property, (2) the time and origin of the loss, destruction or damage, (3) all known interests in commingled property of which the Government property is a part, and (4) the

insurance, if any, covering any part of or interest in such commingled property. If and as directed by the contracting officer, the contractor shall make repairs and renovations of the damaged Government property. The contractor shall be reimbursed the expenditures made by it and approved by the contracting officer in performing its obligations under this Section 10 (including charges made to the contractor by the Loss and Salvage Organization, except any of such charges, the payment of which the Government has, at its option, assumed direct).

P. The provisions of Change Order 10 have been inserted as paragraph h of Article IV-A of Title IV; the provisions of Change Orders 12, 13 and 14 have been incorporated under Titles II and IV; and the provisions of Change Order 15 have been inserted as paragraph c of Section 4 of Article IV-A of Title IV. Therefore, Change Orders 10, 12, 13, 14 and 15 are hereby superseded.

Q. Except as herein provided the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

R. This Supplemental Contract shall be subject to the written approval of the Chief of Ordnance or his duly authorized representative and shall not be binding until so approved.

S. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

**THE UNITED STATES OF  
AMERICA,**

(Sgd.) By **JOHN K. WILLARD,**  
(John K. Willard)

Lt. Col., Ord. Dept. Execu-  
tive Officer, Field Direc-  
tor of Ammunition Plants.  
(Contracting Officer ap-  
pointed by the Chief of  
Ordnance.)

**PGP**

(Sgd.) By **O. P. EASTERWOOD, JR.,**  
(O. P. Easterwood, Jr.)

Major, Corps of Engineers.  
(Contracting Officer ap-  
pointed by the Chief of  
Engineers.)

**W.M.M.**

**O.F.S.**

**SILAS MASON COMPANY,**  
(Contractor)

(Sgd.) By **R. L. TELFORD.**

P. O. Box 1162,  
Shreveport, Louisiana.  
Business Address.

Two Witnesses as to Execution by the Contractor:

(Sgd.) EDWIN F. ROGGE.

218 Merrick,  
Shreveport, La.  
Address.

(Sgd.) OCTAVA W. ADKINS.

1000 Elm,  
Minden, La.  
Address.

I, R. T. Buffington, certify that I am the Assistant Secretary of the corporation named as Contractor herein; that R. L. Telford who signed this contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) R. T. BUFFINGTON,  
Asst. Secretary.

(Corporate Seal)

Parsons/ap.

Change Order No. 17.

Contract No. W-ORD-517.

DA-ORD-4, As Amended.

(Supplement 16 pending.)

Army Service Forces,  
Office of the Chief of Ordnance,  
Field Director of Ammunition Plants,  
St. Louis 8, Missouri.

In reply refer to:  
SPOLY-G,  
Legal Section.

29 June 1945.

Silas Mason Company,  
Louisiana Ordnance Plant,  
Shreveport 1, Louisiana.

Re: Additional Facility Expansion.

Gentlemen:

A site letter has been approved authorizing the modification of Load Line S at the Plant to provide facilities and capacity for loading 405,000 4.2" Chemical Mortar Shell per month.

Therefore, pending the negotiation and execution of a formal supplement to Contract No. W-ORD-517 DA-W-ORD-4, as amended, covering such modification, you are hereby authorized and directed, pursuant to the provisions of Article VII-C of Title VII thereof, to procure such production equipment as is not furnished by the Government, install said equipment and operate said facilities, as may be approved or ratified by the Contracting Officer, as will be necessary to provide for such facility expansion and for the operation thereof.

It is expressly understood and agreed that the work described herein is deemed to be a part of the work under said Contract No. W-ORD-517 DA-W-ORD-4, as amended, and that it shall be governed by all the applicable pro-

visions of said contract, including, without limiting the generality of the foregoing, those pertaining to reimbursement.

The work authorized by this Change Order may involve an appreciable increase in the cost of the work. Therefore, it is understood and agreed that as soon as a detailed estimate of the amount of the work involved is available it will be furnished to the Ordnance Department by the Contractor. Any fixed fee for the foregoing work will be negotiated as a part of said supplement.

Except as hereby changed, the terms and conditions of the Original Contract, as heretofore amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 17.

If this Change Order is satisfactory, please so indicate by signing the three inclosed copies and returning the original and one of the carbon copies of same to this office for conforming and distributing.

For the Chief of Ordnance:

Yours very truly,  
 (S.) JOHN K. WILLARD,  
 (John K. Willard),  
 Lt. Col., Ord. Dept., Executive Officer, Field Director  
 of Ammunition Plants  
 Contracting Officer,

PGP.

Receipt is hereby acknowledged of the above Change Order No. 17 to Contract No. W-ORD-517 DA-W-ORD-4,

dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: July 3, 1945.

**SILAS MASON COMPANY,**  
(Contractor),

(S.) By **R. L. TELFORD,**  
Vice President & General  
Manager.

Due to change in identification system of modifications to contracts, this Change Order is numbered 18, there having been executed Supplements 1, 4, 6, 9 and 16, Modification 11, and Change Orders, 2, 3, 5, 7, 8, 10, 12, 13, 14 and 15.

Parsons/ap.

Change Order No. 18.

Contract No. W-ORD-517.

DA-W-ORD-4, As Amended.

Date: 25 July 1945.

War Department—Ordnance Department,

Change Order to  
Cost-Plus-A-Fixed-Fee,

New Ordnance Facility,  
Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

Name & Location of Plant: Louisiana Ordnance Plant,  
Minden, La.

Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended,

the following additional instructions are hereby issued and the following work is hereby ordered:

1. The Contractor may (but is not obligated), when requested or authorized by the Contracting Officer, extend technical aid and any assistance (including the furnishing of necessary equipment, materials and work forces) in connection with the moving, salvage, demolition, neutralization or other disposition of Government-owned ammunition, explosives, or dangerous chemicals being transported or stored by a carrier.

2. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under this contract, as amended, and that the performance of said work will be done under and in accordance with the applicable provisions of this contract, including, without limiting the generality of the foregoing, those provisions which deal with reimbursement.

3. There is no appreciable change in the estimated cost of the Contractor's services under said contract and no change is made in the fixed-fee. No change in the time of performance is involved.

4. Except as hereby changed, the terms and conditions of said contract, as amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 18.

THE UNITED STATES OF  
AMERICA,

(S.)

JOHN K. WILLARD,

(John K. Willard),

Lt. Col., Ord. Dept., Executive Officer, Field Director  
Ammunition Plants, Contracting Officer.

PGP.

Receipt is hereby acknowledged of the above Change Order No. 18 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: July 28, 1945.

SILAS MASON COMPANY,  
(S.) By R. L. TELFORD,  
Vice President & Gen. Mgr.

Due to change in identification system of modifications to contracts, this Change Order is numbered 19, there having been executed Supplements 1, 4, 6, 9 and 16, Modification 11, and Change Orders 2, 3, 5, 7, 8, 10, 12, 13, 14, 15, 17 and 18.

Mattice/ap.

Change Order No. 19.

Contract No. W-ORD-517.

DA-W-ORD-4, As Amended.

Date: 24 August 1945.

War Department—Ordnance Department,

Change Order to  
Cost-Plus-A-Fixed-Fee,

New Ordnance Facility,  
Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

**Name & Location of Plant:** Louisiana Ordnance Plant,  
Minden, La.

1. Pursuant to the provisions of Article VII-C of Title VII of Contract No. W-ORD-517 DA-W-ORD-4, as amended, the following additional instructions are hereby issued and the following additions to and omissions from the work covered by said contract are hereby ordered:
  - a. You will (1) cease all loading operations immediately in connection with the Louisiana Ordnance Plant except to complete the loading of the materials in process, (2) proceed to do all things necessary to make said Plant safe and free from explosive hazards insofar as is reasonably possible to do so, (3) continue with the operation of the ammonium nitrate graining facilities at Plant, and (4) proceed with the settlement of your subcontracts canceled due to recent schedule cutbacks and/or due to the work ordered omitted hereby (such settlement shall be made subject to the approval of the Contracting Officer).
2. It is expressly understood and agreed that the foregoing is deemed to be part of the work under said Contract W-ORD-517 DA-W-ORD-4, as amended.
3. It is further understood and agreed that the foregoing will cause a material decrease in the amount of the work under said Contract and in the estimated cost of the Contractor's services thereunder. Therefore, an equitable adjustment of the amount of the fixed-fee to be paid the Contractor shall be made and the contract modified by a future supplement thereto accordingly.
4. The Change Order dated 25 July 1945 having been erroneously numbered 17 is hereby correctly numbered 18.

5. Except as hereby changed, the terms and conditions of said contract, as amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 19.

THE UNITED STATES OF  
AMERICA,

(S.)

JOHN K. WILLARD,

(John K. Willard),

Lt. Col, Ord. Dept., Execu-  
tive Officer, Field Director  
Ammunition Plants, Con-  
tracting Officer.

PMM.

JJMcl.

Receipt is hereby acknowledged of the above Change Order No. 19 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: September 11, 1945.

SILAS MASON COMPANY,

(S.)

By R. L. TELFORD,

(R. L. Telford),

Vice President.

**NOTICE OF TERMINATION CONTRACT W-ORD-517  
DA-W-ORD-4 AS AMENDED**

**Army Service Forces,  
Office of the Chief of Ordnance,  
Field Directors of Ammunition Plants,  
St. Louis 8, Missouri.**

**4 October 1945.**

**In reply refer to:  
APOLY-G  
Legal Section.**

**Silas Mason Company,  
Louisiana Ordnance Plant,  
Shreveport 1, Louisiana.**

**Attn.: Mr. R. L. Telford.**

**Re: Termination of the Work under Contract W-ORD-517  
—DA-W-ORD-4, Louisiana Ordnance Plant.**

**Gentlemen:**

**Effective midnight, 9 November 1945, the work under  
Contract W-ORD-517 DA-W-ORD-4, as amended, is termi-  
nated for the convenience of the Government.**

**Please execute the acknowledgment of receipt on the  
three inclosed copies and return the original and one of  
the carbon copies to this office.**

**For the Chief of Ordnance:**

**Yours very truly,**

**(S.)**

**JOHN K. WILLARD,  
(John K. Willard).**

**Lt. Col., Ord. Dept., Execu-  
tive Officer, Field Director  
of Ammunition Plants,  
Contracting Officer.**

Receipt is hereby acknowledged of above Notice of Termination to Contract W-ORD-517 DA-W-ORD-4, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: October 9, 1945.

SILAS MASON COMPANY,  
(S.) By R. L. TELFORD.

Due to change in identification system of modifications to contracts, this Change Order is numbered 20, there having been executed Supplements 1, 4, 6, 9 and 16, Modification 11, and Change Orders 2, 3, 5, 7, 8, 10, 12, 13, 14, 15, 17, 18 and 19.

Mattice/ap.

Change Order No. 20.

Contract No. W-ORD-517.

DA-W-ORD-4, As Amended.

Date: 31 October 1945.

War Department—Ordnance Department,

Change Order to  
Cost-Plus-A-Fixed-Fee,

New Ordnance Facility,  
Construction and Operation Contract.

Contractor: Silas Mason Company, New York, New York.

**Name & Location of Plant: Louisiana Ordnance Plant,  
Minden, La.**

1. Effective immediately, the Notice of Termination dated 4 Oct. 1945 to Contract W-ORD-517 DA-W-ORD-4, as amended, is hereby rescinded.

2. Pursuant to the provisions of Article VII-C of Title VII of said contract, the following additional instructions are hereby issued and the following additions to and omissions from the work covered by said contract are hereby ordered:

a. The Contractor is hereby authorized and directed to do all things necessary or convenient to prepare for operation and to operate the ammonium nitrate crystallizing facilities of the Lone Star Ordnance Plant, near Texarkana, Texas, and of the Wolf Creek Ordnance Plant, near Milan, Tennessee, beginning in the case of Lone Star Ordnance Plant, 4 November 1945, and in the case of Wolf Creek Ordnance Plant, 19 November 1945, and continuing as directed from time to time by the Contracting Officer, but, in any event, not beyond 31 December 1945. In such operation Contractor will crystallize ammonium nitrate solution and coat the same, in accordance with the process hereby referred to as the Tennessee Valley Authority Process for ammonium nitrate fertilizer, in such quantities as may be directed from time to time by the Contracting Officer.

3. In carrying out the work under this Change Order, it is expressly understood and agreed that the Contractor is authorized to make use of the existing facilities, utilities and services at the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant, insofar as is reasonably possible, and insofar as may be approved by

the Contracting Officer under this Contract, and by the Commanding Officer of either the Lone Star Ordnance Plant or the Wolf Creek Ordnance Plant, as the case may be.

4. It is expressly understood and agreed by and between the parties hereto that the Contracting Officer's decision as to the proper proportionate share of any costs incurred jointly under this Contract and under the Government operation of the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant by reason of the foregoing, to be charged to this Contract or to the funds appropriated for the Government operation of the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant, shall be final and conclusive upon the parties hereto, subject only to appeal as provided for in Article VII-N of Title VII hereof.

5. The Contractor is authorized to turn over to the Ordnance Department custody and responsibility for the Louisiana Ordnance Plant site, except for the ammonium nitrate area, and custody, responsibility and accountability for all property located thereon, on or about November 9, 1945, or as near thereto as is reasonably possible.

6. It is expressly understood and agreed that the foregoing is deemed to be a part of the work under said Contract W-ORD-517 DA-W-ORD-4, as amended.

7. The work covered by this Change Order involves an increase in the cost of the work under this Contract, as amended through Change Order No. 19. Any fixed-fees for the work covered by this Change Order will be agreed upon by negotiations between the Government and the Contractor prior to the execution of a formal supplement to the said contract covering this work.

8. The Contractor is requested to furnish promptly an estimate of the cost of the work done and to be done under Change Order No. 19 to said contract, dated 24 August 1945, and to be done under this Change Order No. 20. This estimate should include (a) the cost of the work under subparagraphs (1), (2) and (4) of paragraph 1.a. of said Change Order No. 19; (b) the cost of the work under subparagraph (3) of paragraph 1.a. of said Change Order No. 19 through November 9, 1945; and (c) the cost of the work under this Change Order No. 20.

9. It is expressly understood and agreed that the provisions of Change Order No. 7 to said contract, dated February 19, 1944, shall extend to and include the ammonium nitrate crystallizing facilities of the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant, from the dates on which the Contractor begins operations in said areas as provided in paragraph 2.a. hereof.

10. Except as hereby changed, the terms and conditions of said Contract, as amended, shall remain in full force and effect and shall apply with equal force and effect in carrying out the provisions of this Change Order No. 20.

THE UNITED STATES OF  
AMERICA,

(S.)

R. H. STRATTON,

(R. H. Stratton),

PMM

Lt. Col., Ord. Dept., Execu-  
tive Officer, Field Director  
Ammunition Plants, Con-  
tracting Officer.

Receipt is hereby acknowledged of the above Change Order No. 20 to Contract No. W-ORD-517 DA-W-ORD-4, dated July 3, 1941, as amended, and the Contractor hereby accepts the terms and conditions thereof.

Date: November 5, 1945.

**SILAS MASON COMPANY,**  
(S.) By **R. L. TELFORD.**

Due to change in identification system to modifications to contracts this Supplement is numbered 21, there having been executed Supplements 1, 4, 6, 9 and 16, and Change Orders, 2, 3, 5, 7, 8, 10, (Mod. 11 Unilateral), 12, 13, 14, 15, 17, 18, 19 and 20.

Contract No. W-ORD-517 DA-W-ORD-4.

Supplement No. 21:

Cost-Plus-A-Fixed-Fee,

New Ordnance Facility,  
Construction and Operation Contract.

War Department.

Contractor: Silas Mason Company, New York, N. Y.

Place: At or near Minden, Louisiana.

Supplemental Contract: Providing for the estimated cost of the work in ceasing loading operations, decontaminating the Plant, continuing the operation of the ammonium nitrate graining facilities, and certain other work.

Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authority, the available balance of which is sufficient to cover the cost of the same:

605-6035 P120 A212/61005.

(S.)

R. H. STRATTON,

(R. H. Stratton),

Lt. Col., Ord. Dept., Executive Officer, Field Director  
Ammunition Plants, Contracting Officer.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.); and Executive Order No. 9001 dated December 27, 1941.

Received 12:30 P. M. Jan. 14, 1946. Silas Mason Co., Shreveport, La.

#### SUPPLEMENTAL CONTRACT.

This Supplemental Contract, entered into this 5th day of December, 1945, by The United States of America, hereinafter called the "Government", represented by the Contracting Officer executing this contract, and Silas Mason Company, a corporation organized and existing under the laws of the State of Delaware, of the City of New York, in the State of New York, hereinafter called the "Contractor", Witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract dated July 3, 1941, identified by the

Government as Contract No. W-ORD-517 DA-W-ORD-4, and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, the Original Contract has been supplemented and amended by various Change Orders and Supplemental Agreements; and

Whereas, the Contracting Officer, after consultation with the Contractor, by a written order, dated August 24, 1945, and designated as Change Order No. 19 directed the Contractor to omit certain work covered by the said contract, to decontaminate the Plant, to continue with certain work under the said contract; and

Whereas, the Contracting Officer, after consultation with the Contractor, by a written order dated 31 October 1945, and accepted by the Contractor 5 November 1945, and designated as Change Order No. 20, directed the Contractor to operate certain ammonium nitrate crystallizing facilities not previously covered by said contract; and

Whereas, the above mentioned changes caused a material decrease in the amount of the work to be done under the said contract; and

Whereas, the Original Contract, as amended, provides that an equitable adjustment of the amount of the fixed-fees to be paid the Contractor shall be made if such changes cause a material decrease in the amount of the work to be done under the said contract; and

Whereas, the Government and the Contractor, after negotiations have arrived at an agreement as to the estimated cost of the work to be performed by reason of such changes, and the amount of the fixed-fee to be paid therefor; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions herein after set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the foregoing;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

A. Paragraph c. of Section 4 of Article IV-A of Title IV is changed to read:

c. Beginning June 8, 1945, the Contractor shall, as directed from time to time by the Contracting Officer, operate the Plant to August 24, 1945.

B. The following are added as paragraphs d, e and f to Section 4 of Article IV-A of Title IV:

d. Beginning August 24, 1945, the Contractor shall (1) cease all loading operations in connection with the Plant except to complete the loading of the materials in process (2) proceed to do all things necessary to make said Plant

safe and free from explosive hazards insofar as is reasonably possible to do so, and (3) constitute with the operation of the ammonium nitrate graining facilities at said Plant for the production of such quantities as may be directed from time to time by the Contracting Officer for a period ending June 30, 1946.

e. Beginning November 4, 1945, the Contractor shall operate the ammonium nitrate graining facilities of the Lone Star Ordnance Plant, near Texarkana, Texas, for the production of such quantities as may be directed from time to time by the Contracting Officer for a period ending June 30, 1946.

f. Beginning November 19, 1945, the Contractor shall operate the ammonium nitrate graining facilities of the Wolf Creek Ordnance Plant, near Milan, Tenn., for the production of such quantities as may be directed from time to time by the Contracting Officer for a period ending June 30, 1946.

C. The following are added as paragraphs j. and k. to Section 7 of Article IV-A of Title IV:

j. In carrying out the work under Change Order No. 20 to this Contract, dated 31 October 1945, and under paragraphs e. and f. of Section 4 of this Article IV-A, it is expressly understood and agreed that the Contractor is authorized to make use of the existing facilities, utilities and services at the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant, insofar as is reasonably possible, and insofar as may be approved by the Contracting Officer under this Contract, and by the Commanding Officer of either the Lone Star Ordnance Plant or the Wolf Creek Ordnance Plant, as the case may be.

k. It is expressly understood and agreed that the provisions of Change Order No. 7 to this Contract, dated February 19, 1944, shall extend to and include the ammonium nitrate graining facilities of the Lone Star Ordnance Plant and the Wolf Creek Ordnance Plant, from the dates on which the Contractor begins operations in said areas as provided in paragraphs e. and f. respectively of Section 4 of this Article IV-A.

D. Due to the reduction of work under paragraph c. of Section 4 of Article IV-A of Title IV, a reduction in the estimated cost of the work in the amount of Twenty-three Million Five Hundred Seventy-seven Thousand Seven Hundred Ten Dollars (\$23,577,710.00) has been agreed upon. Therefore, paragraph d. of Section 1 of Article IV-B of Title IV is changed to read:

d. It is estimated that the cost of the work provided for in paragraph c. of Section 4 of Article IV-A of Title IV will be Six Million Four Hundred Seven Thousand Eight Hundred Eighty Dollars (\$6,407,880.00), exclusive of the Contractor's fee.

E. The following are added as paragraphs e, f, g and h to Section 1 of Article IV-B of Title IV:

e. It is estimated that the cost of the work provided for in subparagraphs (1) and (2) of paragraph d. of Section 4 of Article IV-A of Title IV will be Eight Hundred Seventy-eight Thousand Seven Hundred Thirty-six Dollars (\$878,736), exclusive of the Contractor's fee.

f. It is estimated that the cost of the work up to and including December 31, 1945, provided for in subparagraph (3) of paragraph d. of Section 4 of Article IV-A of Title IV will be Three Hundred Thirty-one Thousand Two

Hundred Seventy-four Dollars (\$331,274.00), exclusive of the Contractor's fee.

g. It is estimated that the cost of the work up to and including December 31, 1945, provided for in paragraph e. of Section 4 of Article IV-A of Title IV will be One Hundred Fourteen Thousand Five Hundred Dollars (\$114,500.00), exclusive of the Contractor's fee.

h. It is estimated that the cost of the work up to and including December 31, 1945, provided for in paragraph f. of Section 4 of Article IV-A of Title IV will be Forty-six Thousand Five Hundred Dollars (\$46,500.00), exclusive of the Contractor's fee.

F. Due to the reduction of work under paragraph c. of Section 4 of Article IV-A of Title IV a reduction in the fixed-fee in the amount of Two Hundred Seventy-five Thousand Two Hundred Five Dollars Forty-eight Cents (\$275,205.48) has been agreed upon. Therefore, Section 5 of Article IV-C of Title IV is changed to read.

5. A fixed-fee for the work provided for in paragraph c. of Section 4 of Article IV-A hereof, in the amount of Seventy-four Thousand Seven Hundred Ninety-four Dollars Fifty-two Cents (\$74,794.52), which fee shall constitute complete compensation for the Contractor's services from June 8, 1945 to August 24, 1945, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

G. The following are added as Sections 6, 7, 8 and 9 to Article IV-C of Title IV:

6. A fixed-fee for the work provided for in subparagraphs (1) and (2) of paragraph d. of Section 4 of Article

IV-A hereof in the amount of Eighteen Thousand Dollars (\$18,000.00) which fee shall constitute complete compensation for contractor's services under said subparagraph (1) and (2), including profit other than that included in that prices quoted pursuant to Section 8 of Article IV-A of this Title IV.

7. A fixed-fee for the work (through December 31, 1945), provided for in subparagraph (3) of paragraph d. of Section 4 of Article IV-A hereof in the amount of Eleven Thousand Six Hundred Fifty Dollars (\$11,650.00) which fee shall constitute complete compensation for contractor's services under said subparagraph (3), for the period through December 31, 1945, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of Title IV.

8. A fixed-fee for the work (through December 31, 1945), provided for in paragraph e. of Section 4 of Article IV-A hereof in the amount of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) which fee shall constitute complete compensation for Contractor's services under said paragraph e. for the period through December 31, 1945, including profit other than included in the prices quoted pursuant to Section 8 of Article IV-A, Title IV.

9. A fixed-fee for the work (through December 31, 1945), provided for in paragraph f. of Section 4 of Article IV-A hereof in the amount of Two Thousand Dollars (\$2,000.00), which fee shall constitute complete compensation for Contractor's services under said paragraph f, including profit other than that included in the prices pursuant to Section 8 of Article IV-A of Title IV.

H. The following is added as paragraph x. of Section 1 of Article V-A, Title V:

x. Costs and expenses incurred pursuant to the terms of Change Orders No. 19 and 20 dated August 24, 1945 and 31 October 1945, respectively, and accepted by the Contractor September 11, 1945 and November 5, 1945, respectively. Said Change Orders No. 19 and 20 shall cease and terminate for all purposes upon the date of execution of this Twenty-first Supplement, except for the authority heretofore granted the Contractor by the terms of this Contract, and explicitly reiterated in said Change Order No. 19 to proceed with the settlement of all canceled sub-contracts and purchase orders, which authority is hereby continued with the same force and effect as if herein set forth in full and except for the provisions contained in paragraphs 1, 5, 6 and 10 of said Change Order No. 20.

I. The following are added as Sections 9 and 10 to Article V-A of Title V:

9. It is agreed that the Contractor shall receive no fee for the work and services performed under Change Order No. 17 to this Contract.

10. It is expressly understood and agreed by and between the parties hereto that the Contracting Officer's decision as to the proper proportionate share of any costs incurred jointly under this Contract and under the Government operation of the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant by reason of the work provided for in Change Order No. 20 to the Contract, dated 31 October 1945, and in paragraphs e. and f. of Section 4 of Article IV-A of Title IV, to be charged to this Contract or to the funds appropriated for the Government operation of the said Lone Star Ordnance Plant and the said Wolf Creek Ordnance Plant, shall be final and conclusive upon the parties hereto, subject only to appeal as provided for in Article VII-N of Title VII hereof.

J. Paragraph (4) of paragraph d. of Section 3 of Article V-B of Title V is changed to read:

(4) The fixed-fee of Seventy-four Thousand Seven Hundred Ninety-four Dollars Fifty-two Cents (\$74,794.52), provided in Section 5 of Article IV-C of Title IV, for the operation of the Plant during the period provided for in paragraph c. of Section 4 of Article IV-A of Title IV, shall be paid in installments as follows: Twenty-nine Thousand One Hundred Sixty-six Dollars Sixty-six Cents (\$29,166.66) on the 8th day of July 1945, and a like installment on the 8th day of August 1945. The last installment of Sixteen Thousand Four Hundred Sixty-one Dollars Twenty Cents (\$16,461.20) shall be paid upon completion of such work and its acceptance in writing by the Contracting Officer.

K. The following are added as paragraphs (5), (6), (7) and (8) to paragraph d. of Section 3 of Article V-B of Title V:

(5) The fixed-fee of Eighteen Thousand Dollars (\$18,000.00) provided for in Section 6 of Article IV-C of Title IV shall be paid either upon the furnishing by the Contractor to the Government of the release provided for in Section 4 of Article V-B hereof or under a Final Settlement Agreement whichever may be mutually agreed to by the parties.

(6) The fixed-fee of Eleven Thousand Six Hundred Fifty Dollars (\$11,650.00) provided for in Section 7 of Article IV-C of Title IV for operation through December 31, 1945 (at Louisiana Ordnance Plant) shall be paid upon completion of such work and its acceptance in writing by the Contracting Officer.

(7) The fixed-fee of Five Thousand Three Hundred Fifty Dollars (\$5,350.00) provided for in Section 8 of Article IV-C of Title IV for operation through December 31, 1945 (at Lone Star Ordnance Plant) shall be paid upon completion of such work and its acceptance in writing by the Contracting Officer.

(8) The fixed-fee of Two Thousand Dollars (\$2,000.00) provided for in Section 9 of Article IV-C of Title IV for operation through December 31, 1945 (at Wolf Creek Ordnance Plant) shall be paid upon completion of such work and its acceptance in writing by the Contracting Officer.

L. Paragraph a. of Section 4 of Article V-B of Title V is changed to read:

a. Upon completion of the work under Titles I and II, and under Sections 1, 2 and 3 and paragraphs a and b of Section 4 of Article IV-A of Title IV, and again upon the completion of the work under paragraphs c, d, e and f of Section 4 of Article IV-A of Title IV, the Government shall pay the Contractor the unpaid balance of the cost of the work determined under Title V hereof, and of the fees, less any sum that may be necessary to settle any unsettled claims for labor or materials, or any claim the Government may have against the Contractor. The Contracting Officer shall accept or reject the completed work with reasonable promptness.

M. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

N. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

The following sentence was added to Sections 7, 8 and 9 of Article IV-C of Title IV as set forth in Division G above:

"A fixed-fee for the Contractor's services for the period beginning January 1, 1946 to June 30, 1946 inclusive will be negotiated."

Section 9 of Article IV-C of Title IV as set forth in Division G above is changed to read:

"9. A fixed-fee for the work (through December 31, 1945), provided for in paragraph f. of Section 4 of Article IV-A hereof in the amount of Two Thousand Dollars (\$2,000.00), which fee shall constitute complete compensation for Contractor's services under said paragraph f. for the period through December 31, 1945, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of Title IV. A fixed-fee for the Contractor's services for the period beginning January 1, 1946 to June 30, 1946, inclusive, will be negotiated."

In Witness Whereof, the parties hereto have executed this contract in triplicate as of the day and year first above written.

THE UNITED STATES OF  
AMERICA,

(S.) By R. H. STRATTON,

(R. H. Stratton),

PMM.

Lt. Col., Ord. Dept., Executive Officer, Field Director Ammunition Plants, (Contracting Officer appointed by the Chief of Ordnance).

SILAS MASON COMPANY,

(Contractor),

(S.) By R. L. TELFORD,

Business Address: Shreveport, La.

Two Witnesses as to Execution by the Contractor:

(S.) RUSSEL G. CARR,  
Address: Box 1162,  
Shreveport, La.

(S.) R. L. WILSON,  
Address: Minden, La.

I, R. T. Buffington, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that R. L. Telford who signed this Contract on behalf of the Contract was then Vice-President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(S.) R. T. BUFFINGTON,  
(Corporate Seal) Ass't Secretary.

Due to change in identification system to modifications to contracts this Supplement is numbered 22, there having been executed Supplements 1, 4, 6, 9, 16 and 21 and Change Orders 2, 3, 5, 7, 8, 10 (Mod. 11 Unilateral), 12, 13, 14, 15, 17, 18, 19 and 20.

Contract No. W-ORD-517 DA-W-ORD-4.

Supplement No. 22.

Cost-Plus-A-Fixed-Fee,

New Ordnance Facility,  
Construction and Operation Contract.

War Department.

Contractor: Silas Mason Company, New York, N. Y.

Place: At or near Minden, Louisiana.

Supplemental Contract: Providing for the estimated cost of the work in continuing the operation of the ammonium nitrate graining facilities, and certain other work.

Payments to be made by Finance Officer, U. S. Army at New Orleans, Louisiana.

The equipment, supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following procurement authority, the available balance of which is sufficient to cover the cost of the same:

605-6035 P120 A212/61005.

(S.)

R. H. STRATTON,

(R. H. Stratton),

Lt. Col., Ord. Dept., Executive Officer, Field Director  
Ammunition Plants, Contracting Officer.

This Supplemental Contract is authorized by and negotiated pursuant to the following laws: The Act approved July 2, 1940 (Public No. 703, 76th Cong.), as extended, the Act of March 11, 1941 (Public Law 11, 77th Cong.), as extended, the Act approved December 18, 1941 (Public Law 354, 77th Cong.); and Executive Order No. 9001 dated December 27, 1941.

#### SUPPLEMENTAL CONTRACT.

This Supplemental Contract, entered into this 20th day of December, 1945, by The United States of America, hereinafter called the "Government", represented by the Contracting Officer executing this contract, and Silas Mason Company, a corporation organized and executing under the laws of the State of Delaware, of the City of New York, in the State of New York, hereinafter called the "Contractor", Witnesseth that:

Whereas, there is now in force between the parties hereto a certain contract dated July 3, 1941, identified by the Government as Contract No. W-ORD-517 DA-W-ORD-4, and being hereinafter sometimes referred to as the "Original Contract"; and

Whereas, the Original Contract has been supplemented and amended by various Change Orders and Supplemental Agreements; and

Whereas, the Original Contract, as amended, provides that the Contractor shall continue with the operation of the ammonium nitrate graining facilities at the Louisiana Ordnance Plant for a period beginning August 24, 1945, and ending June 30, 1946; and

Whereas, the Original Contract, as amended, provides that the Contractor shall operate the ammonium nitrate graining facilities of the Red River Ordnance Depot (formerly Lone Star Ordnance Plant) for a period beginning November 1, 1945, and ending June 30, 1946; and

Whereas, the Original Contract, as amended, provides that the Contractor shall operate the ammonium nitrate graining facilities of the Milan Arsenal (formerly Wolf Creek Ordnance Plant) for a period beginning November 19, 1945, and ending June 30, 1946; and

Whereas, the Original Contract, as amended, provides for the estimated cost of the above mentioned work only up to and including December 31, 1945; and

Whereas, the Original Contract, as amended, provides for the amount of the fixed-fees to be paid the Contractor for the above-mentioned work only up to and including December 31, 1945; and

Whereas, the Original Contract, as amended, provides that fixed-fees for the Contractor's services in connection with the above-mentioned work for the period beginning

January 1, 1946 and ending June 30, 1946, will be negotiated; and

Whereas, the Government and the Contractor, after negotiations have arrived at an agreement as to the estimated cost of the work to be performed during the period beginning January 1, 1946, and ending June 30, 1946, by reason of the foregoing, and the amount of the fixed-fee to be paid therefor for the period beginning January 1, 1946 and ending June 30, 1946; and

Whereas, it has been administratively determined that the foregoing will facilitate the prosecution of the war; and

Whereas, the Contractor has agreed to such modifications upon the terms, conditions and provisions herein-after set out; and

Whereas, the accomplishment of the above described work under a cost-plus-a-fixed-fee contract entered into after negotiations approved by the Secretary of War, and without advertising for proposals, is authorized by law; and

Whereas, as a result of such negotiations the Secretary of War has directed that the Government enter into a Supplemental Contract with the Contractor for the accomplishment of the foregoing;

Now, Therefore, the parties hereto do mutually agree that the Original Contract, as amended, shall be and is hereby modified in the following particulars:

**A. The following are added as paragraphs i, j and k to Section 1 of Article IV-B of Title IV:**

**i. It is estimated that the cost of the work provided for in subparagraph (3) of paragraph d of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, will be Seventy-Two Thousand Three Hundred Seventy-Two Dollars (\$72,372.00) per month, exclusive of the Contractor's fee.**

**j. It is estimated that the cost of the work provided for in paragraph e of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, will be Seventy-Four Thousand Three Hundred Fourteen Dollars (\$74,314.00) per month, exclusive of the Contractor's fee.**

**k. It is estimated that the cost of the work provided for in paragraph f of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, will be Thirty-Nine Thousand Forty Dollars (\$39,040) per month, exclusive of the Contractor's fee.**

**B. The following are added as Sections 10, 11 and 12 to Article IV-C of Title IV:**

**10. A fixed-fee for the work provided for in subparagraph (3) of paragraph d of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, in the amount of Two Thousand Nine Hundred Dollars (\$2,900.00) per month, which fee shall constitute complete compensation for contractor's services under said subparagraph (3), for the period from January 1, 1946 through June 30, 1946, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of Title IV.**

11. A fixed-fee for the work provided for in paragraph e of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, in the amount of Two Thousand Nine Hundred Dollars (\$2,900.00) per month, which fee shall constitute complete compensation for Contractor's services under said paragraph e, for the period from January 1, 1946 through June 30, 1946, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of Title IV.

12. A fixed-fee for the work provided for in paragraph f of Section 4 of Article IV-A of Title IV, for the period beginning January 1, 1946 and ending June 30, 1946, in the amount of One Thousand Four Hundred Fifty Dollars (\$1,450.00) per month, which fee shall constitute complete compensation for Contractor's services under said paragraph f, for the period from January 1, 1946 through June 30, 1946, including profit other than that included in the prices quoted pursuant to Section 8 of Article IV-A of Title IV.

C. The following are added as paragraphs (9), (10) and (11) to paragraph d of Section 3 of Article V-B of Title V:

(9) The fixed-fee of Two Thousand Nine Hundred Dollars (\$2,900.00) per month provided for in Section 10 of Article IV-C of Title IV shall be paid as follows. The first such monthly fee to be paid January 31, 1946, and the succeeding monthly fees to be paid on the last day of each of the next succeeding months during which the Contractor continues the operation of the ammonium nitrate graining facilities at the Louisiana Ordnance Plant. It is expressly understood and agreed, however, that in the event the work under subparagraph (3) of paragraph

d of Section 4 of Article IV-A of Title IV should be terminated effective as of a day other than the last day of the month, the last monthly fee shall be prorated on the basis of the number of days of operation following the date on which the last monthly fee prior to the effective date of termination becomes payable.

(10) The fixed-fee of Two Thousand Nine Hundred Dollars (\$2,900.00 per month provided for in Section 11 of Article IV-C of Title IV shall be made as follows: The first such monthly fee to be paid January 31, 1946, and the succeeding monthly fees to be paid on the last day of each of the next succeeding months during which the contractor continues the operation of the ammonium nitrate graining facilities at the Red River Ordnance Depot (formerly Lone Star Ordnance Plant). It is expressly understood and agreed, however, that in the event the work under paragraph e of Section 4 of Article IV-A of Title IV should be terminated, effective as of a day other than the last day of the month, the last monthly fee shall be prorated on the basis of the number of days of operation following the date on which the last monthly fee prior to the effective date of termination becomes payable.

(11) The fixed-fee of One Thousand Four Hundred Fifty Dollars (\$1,450.00) per month provided for in Section 12 of Article IV-C of Title IV shall be made as follows: The first such monthly fee to be paid January 31, 1946, and the succeeding monthly fees to be paid on the last day of each of the next succeeding months during which the contractor continues the operation of the ammonium nitrate grinding facilities at the Milan Arsenal (formerly Wolf Creek Ordnance Plant). It is expressly understood and agreed, however, that in the event the work under paragraph f of Section 4 of Article

IV-A of Title IV should be terminated, effective as of a day other than the last day of the month, the last monthly fee shall be prorated on the basis of the number of days of operation following the date on which the last monthly fee prior to the effective date of termination becomes payable.

D. Except as herein provided, the terms and conditions of the Original Contract, as amended, shall continue in full force and effect and shall apply with equal force to this Supplemental Contract.

E. The following alterations were made in this Supplemental Contract before it was signed by the parties hereto:

None.

Received 7:45 A. M., February 7, 1946, Silas Mason Co., Shreveport, La.

In Witness Whereof, the parties hereto have executed this contract in triplicate as the day and year first above written.

(Sgd.) By R. H. STRATTON,  
 (R. H. Stratton),  
 Lt. Col. Ord. Dept. PMM  
 Executive Officer  
 Field Director Ammunition Plants.  
 (Contracting Officer appointed by the Chief of Ordnance).

SILAS MASON COMPANY,  
 (Sgd.) By R. L. TELFORD,  
 (Contractor).

Shreveport, La.

Business Address:

Two Witnesses as to Execution  
by the Contractor:

(Sgd.) R. L. WILSON,  
Minden, La.

Address:

(Sgd.) V. W. ANDERSON,  
Shreveport, La.

Address:

I, R. T. Buffington, certify that I am the Assistant Secretary of the Corporation named as Contractor herein; that R. L. Telford who signed this Contract on behalf of the Contractor was then Vice President of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Sgd.) R. T. BUFFINGTON,  
(Corporate Seal) Asst. Secretary:

Received 7:45 A. M., February 7, 1946, Silas Mason Co.,  
Shreveport, La.

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## SUPPLEMENTAL COMPLAINT.

(Title Omitted.)

Now come Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson and James E. Fitch, complainants in this cause, in an endeavor to comply with the demand of the respondent for a more

definite statement of facts and a bill of particulars, and in that regard shows:

1.

That in Article II of their original complaint, in referring to (1) rules and regulations of the Department of Labor and (2) of the Administrator of the Fair Labor Standards Act, and (3) to the wage classifications and wage scale promulgated, they meant all regulations and interpretative bulletins of the Department of Labor and of the Administrator of the Fair Labor Standards Act, clarifying and explaining the provisions of the act of Congress here invoked, should be considered; and that the law, as there explained, clarified and interpreted, authorized complainants to recover, as claimed in their original complaint.

Wherefore, complainants pray that this, their supplemental complaint, be deemed sufficient and that in due course they have the full relief prayed for in their original complaint, and for general and equitable relief.

TURNER B. MORGAN.

DONALD L. BAKER.

BOOTH, LOCKARD & JACK,

By L. L. LOCKARD,

Attorneys for Complainants.

Filed June 28, 1946.

(Acceptance of Service omitted)

## OPINION OF COURT.

(Titles Omitted.)

DAWKINS, j:

Plaintiffs sued for overtime, penalties and attorneys' fees, which they claim to be due under the Fair Labor Standards Act of June 25, 1938, C. 676, Sec. 16, 62 Stat. 1069 (Title 29 USCA Sec. 216), alleging that they had been employed in interstate commerce and in the production of goods for commerce within the meaning of Section 3 (Title 29 USCA, Sec. 203) of said statute. The complaint admits that plaintiffs were paid all their wages at what appears to have been a very liberal rate for straight time for the hours they worked.

Defendant has moved for summary judgment, for the rejection of the demands, contending that, under the undisputed facts and the law applicable thereto, plaintiffs were neither engaged in commerce nor the production of goods for commerce. In support of its motion, defendant offered the affidavit of its vice-president and general manager, one R. L. Telford, to which was attached the contract between it and the Government covering the operations involved. Telford's affidavit is quoted as follows:

"That Silas Mason Company constructed and later operated the Louisiana Ordnance Plant under the terms of a contract with the United States of America, a copy of which is filed in the proceeding hereinafter mentioned.

"That construction of the Plant under the terms of the said contract began on or about the 7th day of July, 1941, and that operation of the Plant began on or about the 4th day of March, 1942.

"That deponent has been connected with the Silas Mason Company in an official capacity from a time long prior to the execution of the contract, above referred

to, to the present time; that he was General Manager of the work performed by the Company under the said contract from the beginning of the construction to the 9th day of June, 1943; and was both General Manager as above stated, and Vice-President of the Silas Mason Company thereafter until a time subsequent to August 23, 1945, the date of the filing of Civil Action No. 1594 on the docket of the United States District Court for the Western District of Louisiana, Shreveport Division, entitled 'Harris Kennedy, et al., vs. Silas Mason Company.'

"That at all times involved in the complaint of complainants in the proceeding just above mentioned, the premises upon which complainants were employed, the tools and equipment which they were using in their employment, and the property and products with which they dealt in such employment, were all the property of, and belonged to, the United States Government; that the component parts of the shells, grenades, mines, fuses, bombs, and other products with which all of the Complainants dealt were shipped to the Louisiana Ordnance Plant as property of the Government and the finished product, as property of the Government, was, by its direction, shipped out of the said premises for use by its Armed Forces in its War effort in the War with Germany, Japan, Italy, and other Nations; that at all times involved in the proceeding above mentioned, Silas Mason Company was operating the Louisiana Ordnance Plant, Shreveport, Louisiana, under the contract above mentioned, which is a cost-plus-a-fixed-fee contract with the United States Government, and under which contract the United States Government obligated itself to pay the Silas Mason Company a fixed fee for operating the said Plant, plus all expenses in connection with the operation thereof.

"That there were no rules, regulations, wage scales, or wage classifications promulgated for Silas Mason Company requiring that complainants in the above numbered

proceeding be compensated for all hours in excess of 40 at time and one-half and at double time for all work performed on Sundays and Holidays; and there was no custom of Silas Mason Company involving or requiring such compensation to complainants, or persons similarly situated."

The contract is typical of many others that were entered into by the Government preceding and during World War II. The undisputed facts are that defendant, Silas Mason Co., Inc., hereafter called the contractor, agreed to build an ordnance plant near Minden, Louisiana, to train key personnel and to operate the plant in the manufacture of shells and munitions to be used in prosecuting the war. It was what is known as a "cost-plus-a-fixed-fee" arrangement, which meant that the Government was ultimately to reimburse the contractor for all sums spent under the contract. At all times, the title to all property, tools, materials and supplies placed or delivered upon the project was in the United States. However, the latter was not to be directly liable for any of the obligations of the contractor, although everything was to be under the control of the War Department, when necessary to exercise it. All the finished products were shipped out of the plant under the Government's directions for the use of its armed forces and those of its Allies. All employees save those of the War Department were hired and their compensation fixed by the contractor, subject to the veto of the army officer in charge.

The contract was divided into seven titles, and these in turn, into articles and subsections. Title I was headed "Design, Construction and Engineering"; Title II "Procurement of Production Equipment"; and Title III "Training of Key Personnel." Each of these three titles had a subsection labeled "Eight Hour Law and Overtime Compensation" found in Article I-G of Title I, reading as follows:

"No laborer or mechanic doing any part of the work contemplated by this Title I, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this Article. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this Title I shall be computed on a basic rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this Article a penalty of five dollars shall be imposed upon the Contractor for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this Article, and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, That this stipulation shall be subject in all respects to the exceptions and provisions of U.S. Code, title 40, Sections 321, 325, 324, and 326, relating to hours of labor, as in part modified by the provisions of Section 5(b) of Public Act No. 671, 76th Congress, approved June 28, 1940, and Section 303 of Public Act No. 781, 76th Congress, approved September 9, 1940, relating to compensation for overtime."

The last articles of Titles II and III (being II-D and III-D) declared that "the provisions of Article I-G (with

respect to the eight hour law and overtime) of Title I shall be applied to the work" under Titles II and III.

It is necessary to consider other acts of Congress enumerated in Article I-G, since none of the claims of either this suit or some twenty others of the same nature arose out of either "design, construction and engineering", "procurement of production equipment", or "training of key personnel."

When we come to Title IV, "Operation of Plant (Optional)", we find that Article IV-A provides:

"7. In carrying out the work under this Title IV the Contractor is authorized and shall do all things necessary or convenient in the operating and closing down of the Plant, or any part thereof, including (but not limited to) the employment of all persons engaged in the work hereunder (*who shall be subject to the control and constitute employees of the Contractor*), the providing of all materials and supplies except such as the Government is to furnish or supply as elsewhere specifically provided herein, the storage of materials and supplies and the finished product to the extent of the storage facilities at said Plant, the preparation of the product for shipment and the loading of same on cars or other carriers in accordance with the Government's shipping instructions."

Article IV-D makes applicable provisions of the Walsh-Healy Act of June 30, 1936, 49 Stat. 2036 (Title 41 USCA, Secs. 35-45), but it has no application to these cases. Subsection IV-h-2 recites that "paragraph b of Sec. 1 of this article, IV-D, with respect to wages, is inoperative due to lack of determination by the Secretary of Labor of prevailing minimum wage rates for the industry involved." Subsection b of Section I of Article IV-D, after having declared in subsection a that Silas Mason was "a manufacturer of or a regular dealer in the materials,

supplies, articles, or equipment to be manufactured, or used in the performance of the contract", declared that the provisions of the Walsh-Healey Act should apply to "all persons employed by the contractor in the manufacturing or furnishing of all materials, supplies, articles, or equipment used in the performance of the contract", who shall be paid as provided by that statute. The effect was to first write into and then write out of the contract the Walsh-Healey Act, not as to the operations of the ordnance plant, but as to plants or facilities of the contractor insofar as supplies and materials furnished by it. The other titles and articles of the contract are not pertinent to the issues presented here.

As against the affidavit of Telford and the contract, plaintiffs offered by reference affidavits of Guy W. Harkness, N. K. Kavanaugh and Bryant Hammontrée, former employees of the contractor, submitted in other cases. The pertinent portions of the affidavit of the last mentioned witness, which are typical of all the rest, is quoted as follows:

"That he has personal knowledge of all the facts hereinafter recited in this affidavit.

"That this affiant was first employed by the Silas Mason Company in the construction of the Louisiana Ordnance Plant and began his duties on or about August 24, 1941; that his employment with said company continued from that date until the completion of said plant.

"Affiant further states that during this time when the plant was being constructed, that overtime pay of one and one-half the normal rate was paid and double time was paid for Saturdays, Sundays and holidays, that after the Executive Orders were issued by the President of the United States, that overtime pay of one and one-half

was continued but that double time pay for Sundays and holidays did not apply unless the worker had worked seven consecutive days, under which conditions he then received the double time for the seventh day.

"That this affiant continued to work for Silas Mason Company in the operations of the Louisiana Ordnance Plant in which ammunition, shells, bombs, etc., were manufactured and shipped out of the state and to foreign parts; and also during the time that commercial fertilizer was manufactured and shipped in commerce. That during this period of time all laborers and mechanics were paid a stipulated wage per hour for a forty hour week and were paid one and one-half times their stipulated wage for overtime exceeding 40 hours per week. That this was the common accepted policy of the Silas Mason Company in the construction and operation of the Louisiana Ordnance Plant.

"Affiant further states that the Silas Mason Company was the sole operator of said plant; that their authority covered the hiring and firing of all employees, the actual doing of the work and the manufacturing of the products, and that insurance was carried to cover the men from injury, and that the only part that this affiant knew that the United States Government played at this plant was that they had a force of employees engaged directly by the Government and independent of the Silas Mason Employees, which employees were directly under the Government supervision, were paid by the Government and worked as supervisors, checkers, auditors, and in other capacities. That the Government employees and the Silas Mason employees were entirely separate and were each paid by their respective employers.

"This affiant further states that his checks were signed by Silas Mason through their officials and were drawn on the Silas Mason account in designated banks, and that he received no pay directly from the United States Government."

Of course, if commercial fertilizer was made, sold and shipped in interstate commerce, in sufficient quantities, along with the production of munitions of war for the Government, employees working in that part of the enterprise might be entitled to invoke the provisions of the Fair Labor Standards Act. However, the benefits of that type of employment could be claimed only by those who were so engaged and they would have to allege and prove it. Otherwise, the general principles of law applicable under the contract, the nature of the work and the relationship of the Government thereto would govern. With respect to the statements in those affidavits that overtime had been paid the employees, (which they do not say was paid to these particular employees, or whether it was paid under the first three titles of the contract) this would become important only in event it were found the matter was controlled by the contract and that its meaning was doubtful. In such cases, the manner in which the parties thereto had construed and applied it would help to overcome ambiguity. On the other hand, if, as a matter of law, the Fair Labor Standards Act had no application, such evidence would not help the situation, even if overtime had been paid in some instances. What has just been said applies also to the express provisions as to wages, hours, overtime, etc, dealt with in the first three titles, and omitted in all the rest. In other words, it might be said to be significant that the contract sought to apply the Fair Labor Standards Act to these three titles and hence to relieve from the provisions of that law operations under the fourth and succeeding titles.

It is my view that the issue is simply one of law.

The Act of June 25, 1938, C.676, 52 Stat. 1060, (Tit. 201 - 219 USCA) did the somewhat unusual thing of first announcing findings and then declaring the policy of Congress with respect to labor relations. The findings were (202a) that conditions theretofore existing in "industries engaged in commerce or in the production of goods for commerce" (Emphasis by the writer) produced some five enumerated results, affecting interstate commerce and that (202b) "the policy of sections 201-219 of this title" was "to correct and as rapidly as practicable to eliminate the conditions" so found. Section 203 defines at length the meaning of words, phrases and terms used in the statute. Sub section (a):

"'Person' means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons."

Subsection (d):

"'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee, but *shall not include the United States*, or any state or political subdivision of a state, or any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."

Subsection (e):

"'Employee' includes any individual employed by an employer."

**Subsection (h):**

**"'Industry' means a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed."**

**Subsection (i):**

**"'Goods' means goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof."**

Section 206 of said title prescribes the minimum rates and 207 the maximum hours of labor. The latter declares, in substance, that "no employer shall" require an employee to work more than a specific number of hours (at the time involved here 40) per week "unless such employee" is paid "one and one-half times the regular rate" per hour of his employment.

Section 213 provides certain exemptions but none have application here.

Section 215 makes it unlawful "to transport, offer for transportation, ship, deliver, or sell in commerce x x x any goods in the production of which any employee was employed in violation of Sec. 206 of Sec. 207, x x x or in violation of any regulation or order of the Administrator x x x."

**Section 216 declares:**

**"x x x"**

"(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. x x x x x The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

Thus it is seen that the entire statute sought to deal with private business and industry, expressly excluding the governments of the United States, of the several states and their subdivisions. In subsection 202(a) the findings of Congress were as to "industries engaged in commerce;" and subsection 203 declares that "'Industry' means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed." (Emphasis by the writer.)

It can scarcely be said that the activities of a government constitute "industry" within the definition of that word provided by the statute. The primary purpose and excuse for its existence is the government of its people, including their protection from within and without. It does not exist for the purpose of affording gainful employment for anyone. Such officers and employees as are provided, presumably, at least, are to enable it to discharge its duties as a sovereign, and not to carry on a business for profit. Congress, of course, recognized these indisputable principles and confined the provisions of the Fair Labor Standards Act to private industry.

Starting, therefore, from this premise we approach the present cases with a clear duty not only to exclude from application of the statute the business and operations of the Government but with the further settled

jurisprudence that the Government shall not be bound by any such measures unless specifically included by unmistakable terms. *U. S. vs. Hewes*, 26 Fed. Cas. 297; *Dollar Savings Bank vs. U. S.*, 86 U. S. 227.

Now, let us analyze the situation as it existed at this and similar plants. Plaintiffs contend that notwithstanding the circumstances revealed by the contract and the nature of the work performed, both they and the contractor were engaged in interstate commerce and the production of goods for commerce, as much so as if the enterprise had been owned and operated for private gain; while defendant argues that the production and transportation of munitions of war for and by the Government under the circumstances of these cases, regardless of whether they were made from materials which passed from one state to another was not commerce within the meaning of the law, but activities of the Government as a sovereign in the prosecution of war.

Cases from the lower Federal Courts were cited by either side but none of them, to my mind, is conclusive, and I shall not attempt to review them. Had defendant been engaged in the business of manufacturing munitions of war, either as a general proposition, or under contract by which it agreed to produce and sell to the Government, either at fixed prices or at prices to be set from time to time, the situation would have perhaps been different, and the Fair Labor Standards Act as well as other laws pertaining to labor, prices, material, etc. might have come into play. Overtime and other expenses of the producer or manufacturer from whom the Government purchased would simply have been added to the prices which the Government had to pay, just as was done when it purchased materials, supplies, etc. for carrying on the war. In this latter situation both the employers and employees who made the goods, although for the Government, were engaged in commerce, within

the meaning of the law, where the goods moved from one state to another or overseas. On the other hand, in these cases and all others like them where the Government, instead of going into the market and paying for manufactured or raw materials, chose to furnish its own materials and to have its munitions made and shipped from its own plants, paying all expenses in the form of reimbursements to the contractor, plus a fixed fee for the latter's knowledge and skill in the operation of the plants, although declining to become responsible directly for labor, materials or other obligations of the contractor, it is my view that the same did not constitute commerce. Of course, the Fair Labor Standards Act and all other laws did apply to purchases from private concerns of raw materials or unfinished parts and supplies from which the shells and munitions were made, before they were delivered to the Government, and in those cases where they had to move from one state to another for delivery to the Government. At the same time the finished shells and munitions made at the plant were the Government's property at all times and were physically delivered to it there before being shipped to the battlefronts.

I can not conceive that because the Government saw fit to employ a contractor, either individual or corporate, in the emergency of war, to build and operate a factory for the production of war munitions out of its own materials, upon lands bought or condemned, under its sovereign power, that such a course could be said to affect the fundamental fact that the enterprise was wholly that of the Government itself. I believe that this is one of the instances where the Courts should look through forms and consider substance.

However, after reaching what is thus believed to be a correct conclusion as to the inapplication of the Fair Labor Standards Act to these cases, we are confronted with

the fact that the contract or agreement with defendant shows on its face that it was entered into by the War Department under the authority of the Act of July 2, 1940, (Public No. 703, 54 Stat. 712) entitled "An act to expedite the strengthening of the national defense." Pertinent provisions of the act are as follows:

Sec. 1. "That (a) in order to expedite the building up of the national defense, the Secretary of War is authorized, x x x for national defense purposes for the fiscal year ending June 30, 1941, x x x (1) to provide for the necessary construction x x x and installation x x x of plants, buildings, facilities, utilities, and appurtenances thereto x x x for the development, manufacture, maintenance, and storage of military equipment, munitions, and supplies; (2) to provide for the development, purchase, manufacture, shipment, maintenance, and storage of military equipment, munitions, and supplies x x x; and (3) to enter into such contracts x x x as he may deem necessary to carry out the purpose specified in this section."

Subsection (b) of Sec. 1 further provided:

"The Secretary of War is further authorized x x x x to provide for the operation and maintenance of any plants, buildings, facilities, utilities, and appurtenances thereto constructed pursuant to the authorization contained in this section and section 5, either by means of Government personnel or through the agency of selected qualified commercial manufacturers under contracts entered into with them, x x x under such terms and conditions as it may deem advisable x x x." (Emphasis by the writer.)

Subsection 1 (c): "Whenever, prior to July 1, 1942, the Secretary of War deems it necessary in the interest of national defense, he is authorized, from appropriations available therefor, to advance payments to contractors for supplies or construction for the War Department in amounts not exceeding 30 per centum of the contract price of such supplies or construction. x x x"

Subsection 4, (b) is quoted as follows:

"(b) Notwithstanding the provisions of any other law, the regular working hours of laborers and mechanics employed by the War Department, who are engaged in the manufacture or production of military equipment, munitions, or supplies shall be eight hours per day or forty hours per week during the period of any national emergency declared by the President to exist: Provided, That under such regulations as the Secretary of War may prescribe, such hours may be exceeded, but compensation for employment in excess of forty hours in any workweek, computed at a rate not less than one and one-half times the regular rate, shall be paid to such laborers and mechanics."

Section 5: "The President is authorized x x x (3) to provide for the procurement and training of civilian personnel necessary in connection with the protection of critical and essential items of equipment and material and the use or operation thereof; x x x."

In view of this statute, and the provisions quoted, the question is, whether, within the fair indendment and meaning thereof, the operation of the plant in this case "through the agency of (defendant), a selected, qualified, commercial manufacturer, under contracts entered into with them" placed the plaintiffs within the terms of

subsection 4(b) "of laborers and mechanics employed by the War Department x x x."

Having reached the conclusion (which seems further fortified by the provisions of this statute) that the whole enterprise was that of the Government, notwithstanding the interposition of the defendant as contractor, it would seem to follow, inescapably, that laborers at this plant were in reality employed for the Government, and in their hours of labor, were protected by the quoted provisions of said section 4(b). However, this can not have the result of bringing the matter under the Fair Labor Standards Act. The rights of the plaintiffs and of other "laborers and mechanics" so employed were governed by Section 4(b) of the Act of July 2, 1940, referred to above, which limits the rates for overtime to one and one-half times their regular hourly compensation, and excludes the penalties of an additional equal amount and attorneys' fees.

As to any commercial fertilizer which may have been made at the plant, those employees performing such work, while so engaged, if of sufficient magnitude to form an important part of the enterprise, by proper allegations might invoke the provisions of the Fair Labor Standards Act to the extent only that such fertilizer was involved.

The motion for summary judgment should be denied.

Proper decree should be presented.

Thus done and signed in Chambers at Monroe, Louisiana, on this, the 5th day of November, 1946.

BEN C. DAWKINS,  
U. S. District Judge.

Filed November 6, 1946.

**MOTION FOR REHEARING ON JUDGMENT DENY-  
ING MOTION FOR SUMMARY JUDGMENT.**

161

(Titles Omitted.)

Defendant moves the Court for a rehearing upon its  
motion for summary judgment for the following reasons:

1.

That the judgment filed herein on November 6, 1946,  
is contrary to the law and the evidence, but only insofar  
as it denied defendant's motion for summary judgment.

2.

Alternatively, should the Court fail to sustain the mo-  
tion for summary judgment, as to the entire demands  
of the complainants, nevertheless the Court is in error  
in not sustaining the motion insofar as the demands of  
the complainants are for penalties and for attorney's fees.

Wherefore, defendant prays that this motion for a re-  
hearing be granted, and upon rehearing defendant's mo-  
tion for a summary judgment be sustained as to all de-  
mands of the complainants.

Alternatively, should the Court not sustain the motion  
for summary judgment as to all demands, then that  
there should be summary judgment rejecting all de-  
mands for penalties and for attorney's fees.

**COOK, CLARK & EGAN,**  
**By C. D. EGAN,**  
**Attorneys for Defendant.**

**Filed November 16, 1946.**

# **AMENDED MOTION FOR REHEARING ON JUDGMENT DENYING MOTION FOR SUMMARY JUDGMENT.**

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(Titles Omitted.)

Defendant amends and supplements its motion for a rehearing on the judgment denying motion for summary judgment by changing the number of Article 2 thereof to Article 3, and by adding thereto Article 2 reading as follows:

## **2.**

That in addition to the reasons for a summary judgment set out in the motion itself, defendant now shows that the complaint filed herein alleges the nature of the services performed by each complainant to have been as follows:

Harris Kennedy—Safety Inspector;  
Howard S. Sweatt—Safety Inspector;  
Leonard M. Williams—Chief Shift Process Inspector;  
William S. Jones—Foreman;  
Harry Johnson—Foreman;  
James E. Fitch—Safety Inspector;

that, the said complaint, therefore, affirmatively shows that complainants were neither laborers nor mechanics.

Wherefore, defendant prays that this amended motion be filed and allowed; and further prays that this motion for a rehearing be granted, and upon rehearing defendant's motion for a summary judgment be sustained as to all demands of the complainants.

Alternatively, should the Court not sustain the motion for summary judgment as to all demands, then that there

should be summary judgment rejecting all demands for penalties and for attorney's fees.

COOK, CLARK & EGAN,  
By C. D. EGAN,  
Attorneys for Defendant.

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**ORDER.**

Let the foregoing amended motion for rehearing on judgment denying motion for summary judgment be filed.

Shreveport, Louisiana, December 2d, 1946.

BEN C. DAWKINS,

Judge, United States District  
Court, Western District of  
Louisiana.

(Certificate omitted.)

Filed December 2, 1946.

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**OPINION OF COURT.**

(Titles Omitted.)

DAWKINS, j.:

After full consideration of the briefs and arguments in support of the motions for a new trial, I am convinced that this and the large number of similar cases filed in this Court, not yet passed upon, can not be de-

terminated by the application of the provisions of the Act of July 20, 1940, (public No. 703), 54 Stat. 712, referred to in the former opinion herein, since no such issue has been raised by the pleadings.

However, there has been no change in my views as to the nature of the business and activities involved. It is still thought that no commerce, as such, was involved, but that the whole enterprise was one of making and delivering to the Government, at the plant of munitions of war, used and to be used in the prosecution of the global conflict in which this nation was then engaged. For this reason, as well as those announced in the original opinion, the Fair Labor Standards Act has no application.

Insofar as the manufacture of fertilizer is concerned, it is sufficient to say that none of the plaintiffs allege or claim that they were employed or engaged in any such work, but their duties were entirely in connection with the making and handling of munitions of war and the materials out of which they were made.

My conclusion, therefore, on rehearing, is that the defendant is entitled to a summary judgment as prayed for, rejecting the demands of the plaintiffs.

Proper decree should be presented.

Thus Done and Signed in Chambers at Monroe, Louisiana, on this the 24th day of March, 1947.

BEN C. DAWKINS,  
U. S. District Judge.

Filed March 25, 1947.

## DECREE.

(Titles Omitted.)

A motion having regularly been made by the defendant for summary judgment rejecting the demands of the complainants on the ground that defendant is entitled to a judgment as a matter of law;

On reading the complaint, motion for summary judgment filed by defendant, and the affidavit and attachments filed therewith, as well as the counter affidavits filed by reference by complainants, and the Court being of the opinion, for reasons assigned in the written opinions filed herein on November 6, 1946, and March 25, 1947, that the law and the evidence are in favor thereof;

It Is, Therefore, Ordered, Adjudged and Decreed, that the said motion be, and the same is hereby granted, and that judgment be entered herein in favor of defendant, Silas Mason Company, and against the complainants, Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson, and James E. Fitch, and each of them, rejecting their demands at their costs.

Thus Done and Signed at Monroe, Louisiana, on this the 28th day of March, 1947.

BEN C. DAWKINS,

Judge, United States District  
Court, Western District of  
Louisiana.

Filed March 29, 1947.

**NOTICE OF APPEAL.****(Titles Omitted.)**

Notice Is Hereby Given that Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson and James E. Fitch, complainants in the above entitled and numbered cause, hereby appeal to the Circuit Court of Appeals for the Fifth Circuit, from the final judgment rendered herein on March 28, 1947, and entered herein on the 29th day of March, 1947.

Thus done and signed at Shreveport, Louisiana, this the 8th day of April, 1947.

**TURNER B. MORGAN,  
BOOTH, LOCKARD & JACK.**

By (Sgd.) **L. L. LOCKARD,**  
Attorneys for Complainants.

204 Ardis Building,  
Shreveport, Louisiana.

I hereby certify that a copy of the above and foregoing notice has been served on opposing counsel, Charles D. Egan, Esquire, of the firm of Cook, Clark & Egan, Commercial National Bank Building, Shreveport, Louisiana, by mailing copy to him on this the 8th day of April, 1947, and that in addition to said service, I have delivered to the Clerk of this Court copy to be used by him in giving notification of the filing of this notice of appeal in accordance with Rule 73(b).

(Sgd.) **L. L. LOCKARD,**  
Of Counsel.

Filed April 8, 1947.

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## COST BOND.

(Titles Omitted.)

Know All Men By These Presents that we, Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson and James E. Fitch as principals, and Rex Morrisett as surety, are held and firmly bound unto Silas Mason Company, in the full sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Silas Mason Company, its successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seal and dated this 8th day of April, 1947.

Whereas, lately, at the Fall term of the United States District Court in and for the Western District of Louisiana, in a suit pending in said Court between the said Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson and James E. Fitch, plaintiffs, and the said Silas Mason Company, defendant, a judgment was rendered against the said plaintiffs, and they have given notice of appeal from said judgment, directed to the defendant as provided by Rule 73 of the Rules of Civil Procedure, and the bond of appeal, covering costs, has been fixed by Rule 73(c) of said Rules of Civil Procedure.

Now, the condition of the above obligation is such that if the said Harris Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson and James E. Fitch shall prosecute said appeal and answer all costs if the appeal is dismissed, or the judgment, affirmed, or such costs as the Appellate Court may award if the

judgment be modified, then the above obligation to be valid; otherwise to remain in full force and virtue.

**HARRIS M. NEDY,  
HOWARD S. SWEATT,  
L. M. WILLIAMS,  
WILLIAM S. JONES,  
HARRY JOHNSON,  
JAMES E. FITCH,**

By **L. L. LOCKARD,**

Attorney,

Principals.

**REX MORRISETT,**

(Rex Morrisett),

Surety.

State of Louisiana,  
Parish of Caddo.

Before me, the undersigned authority, personally came and appeared Rex Morrisett, to me known to be the party who has signed the above and foregoing bond, as surety thereon, who, being by me first duly sworn, deposes and says: That he is worth, over and above all debts and obligations, in assets that can be subjected to levy under execution, the amount for which he has bound himself in said bond.

That the signatures on the above bond are true and genuine signatures and that affiant signed the same for the purposes therein set out.

**REX MORRISETT.**

Sworn to and subscribed before me on this the 8th day of April, 1947.

**VELMA PRICE,**  
Notary Public.

(Seal)

(Affidavit of Attorney omitted.)

Filed April 8, 1947.

**DESIGNATION BY APPELLANTS.****(Titles Omitted.)**

Now into Court, comes complainants in this cause, Harris, Kennedy, Howard S. Sweatt, L. M. Williams, William S. Jones, Harry Johnson, and James E. Fitch, and move that the clerk include in the record on appeal in this cause the following:

- (1) Complaint.
- (2) Plea of Prescription.
- (3) Amended or Supplementary Complaint.
- (4) Motion for More Definite Statement of Facts and Bill of Particulars.
- (5) Motion for Summary Judgment.
- (6) Opinion of the Court on Motion for Summary Judgment dated 11/6/46.
- (7) Motion for Rehearing on Judgment Denying Motion for Summary Judgment.
- (8) Amended Motion for Rehearing on Motion Denying Motion for Summary Judgment.
- (9) Opinion of the Court of March 25, 1947.
- (10) Judgment of the Court.
- (11) Notice of Appeal.

(12) Cost Bond.

(13) This Designation, and any other pleading or document filed in this record, whether herein listed or not, save and except Motions for Orders granting additional time to plead.

Thus Done and Signed This the 11th day of April, 1947.

TURNER B. MORGAN,  
BOOTH, LOCKARD & JACK.  
By L. L. LOCKARD,  
Attorneys for Complainants-  
Appellants.

(Certificate of service omitted.)

• • • • •

Filed April 11, 1947.

**CLERK'S CERTIFICATE.**

I, PHILIP H. MECOM, Clerk of the United States District Court for the Western District of Louisiana, Fifth Circuit, do hereby certify that the foregoing one hundred and seventy (170) pages contain and form a full, true, correct and complete transcript of the record in a cause entitled Harris Kennedy, et al vs. Silas Mason Company, No. 1594 on the Civil Docket of this Court, as fully as the original of same remains on file and of record in this office, at Shreveport, Louisiana, the said transcript having been prepared in accordance with Designation filed by counsel in said cause, a copy of which accompanies this transcript.

Witness my official hand and the seal of said Court, at the City of Shreveport, Louisiana, on this the 3rd day of May, A. D. 1947.

(Seal)

PHILIP H. MECOM,  
Clerk.

By MINA E. HOLT,  
Deputy Clerk.

[fol. 247] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

**ARGUMENT AND SUBMISSION**

Extract from the Minutes of October 8th, 1947

No. 11976

**HARRIS KENNEDY, et al.**

**versus**

**SILAS MASON COMPANY**

On this day this cause was called, and, after argument by L. L. Lockard, Esq., for appellants, and Charles D. Egan, Esq., for appellee, was submitted to the Court.

[fol. 248] ORDER SETTING CASE FOR SUBMISSION EN BANC AT FORT WORTH, TEXAS, ON NOVEMBER 12, 1947—Filed October 24, 1947

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 11976

**HARRIS KENNEDY, et al., Appellants,**

**vs.**

**SILAS MASON COMPANY, Appellee**

Appeal from the District Court of the United States for the Western District of Louisiana

No. 12000

**ST. JOHNS RIVER SHIPBUILDING COMPANY, Appellant,**

**vs.**

**R. A. ADAMS, et al., Appellees**

Appeal from the District Court of the United States for the Southern District of Florida

**ORDER FOR SITTING EN BANC**

Whereas, the above styled and numbered causes are appeals from decisions brought under the Fair Labor

Standards Act against employers who were engaged under cost plus contracts in producing articles for use by the government in its war effort; and

Whereas, in each of said appeals a question material to the decision of the appeal is whether within the meaning of the Fair Labor Standards Act the employees were engaged in the production of goods for commerce; and [fol. 249] Whereas, the three judges to whom the two causes were submitted were not the same; and

Whereas, it is deemed desirable that the question common to both causes should be heard by the full court;

It is ordered that the two causes be set for submission before and be submitted to the court en banc at Fort Worth, Texas, on the 12th day of November, 1947.

It is further ordered that such submission shall be on the oral arguments, records and briefs already submitted, supplemented by such other written briefs, arguments and citation of authorities as any of the parties may desire to present but without additional oral argument.

This 24th day of October, 1947.

(Signed) Saml. H. Sibley, J. C. Hutcheson, Jr., E. R. Holmes, Leon McCord, Curtis L. Waller, Elmo P. Lee.

[fol. 250]

#### ARGUMENT AND SUBMISSION

Extract from the Minutes of November 12, 1947

No. 11976

HARRIS KENNEDY, et al.

versus

SILAS MASON COMPANY

On this day this cause was called for resubmission before the Court en banc, and, after argument by L. L. Lockard, Esq., for appellants, and Charles D. Egan, Esq., for appellee, was submitted to the Court.

[fol. 251] OPINION OF THE COURT: CONCURRING OPINION BY  
SIBLEY, CIRCUIT JUDGE, AND DISSENTING OPINION BY  
HUTCHESON, CIRCUIT JUDGE—Filed December 12, 1947

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 11976

HARRIS KENNEDY, et al., Appellants,

versus

SILAS MASON COMPANY, Appellee

Appeal from the District Court of the United States for the  
Western District of Louisiana

(December 12, 1947)

Before Sibley, Hutcheson, Holmes, McCord, Waller, and  
Lee, Circuit Judges, En Banc

McCord, Circuit Judge:

Silas Mason Company during the late war constructed and operated an ordnance plant at Shreveport, Louisiana, under the terms of a "cost-plus-a-fixed-fee" contract with the United States Government. Plaintiffs sued for over-time, penalties, and attorney's fees, which they claim to be due from the Mason Company under the Fair Labor Stand-[fol. 252] ards Act of June 25, 1938, (c. 676, 52 Stat. 1060, 29 U. S. C. A. 203), alleging that they had been employed in interstate commerce and in the production of goods for commerce within the meaning of Title 29, U. S. C. A., Sec. 203.

The Mason Company moved for a summary judgment, on the ground that the plaintiffs were not covered by the Fair Labor Standards Act, in that neither plaintiffs nor defendant were "engaged in commerce," or in the "production of goods for commerce," within the meaning of the Act. This motion was supported by the affidavit of the Vice President of defendant, to which was attached the contract under consideration. The affidavit in support of the motion for summary judgment sets forth the undisputed facts of the case.

The United States was engaged in a war which challenged the very life of the Nation. The defendant was called in and entered into a contract with the Government to construct for it an ordnance plant at Shreveport, Louisiana; and when such plant was erected, to manufacture munitions of war for the Government. The Government owned the land upon which the ordnance plant was built; it owned the plant; it owned the equipment and the materials which went into the manufacture of the munitions; and when such munitions were finished and ready for use, they were stored in plants and buildings which belonged to the Government, or went immediately to the firing line to be there used by the troops. These munitions never at any time went into or became a part of commerce as defined by the Fair Labor Standards Act. They were not manufactured [fol. 253] for sale, nor were they ever intended or used for commercial purposes. The Mason Company had no interest, financial or otherwise, in the shipment, destination, or delivery of these munitions. It sold nothing in interstate commerce; it delivered nothing in interstate commerce; and it shipped nothing except as an agent or instrumentality for the loading of munitions which already belonged to the United States.

Had the defendant been engaged under its contract in the business of manufacturing munitions of war, either as a general proposition, or under contract by which it agreed to produce and sell to the Government, either at fixed prices, or at prices to be fixed from time to time, then we are of opinion that it would come within the Fair Labor Standards Act. This is not the case here. When viewed in the light of the powers reserved to the Government under this "cost-plus-a-fixed-fee" contract it becomes manifest that the Mason Company was not an independent contractor. The Government at all times supervised both the erection of the plant and the manufacture of the munitions.<sup>11</sup>

• • • Performance of the construction work of the entire project will be under the supervision of the Contracting Officer appointed by the Quartermaster General • • • The Contracting Officer may require the Contractor to dismiss from the work any employee the Contracting Officer deems incompetent or whose retention is deemed to be not in the public interest • • • The Government reserves

We are of opinion that transportation by the Government of Government owned munitions during war for use by its armed forces is not "commerce" within the meaning of the Fair Labor Standards Act. *Divins v. Hazeltine Electronics Corp.*, 163 F. 2d 100; *Barksdale v. Ford, Bacon & [fol. 254] Davis, Inc.*, 70 Fed. Supp. 690; *Lynch v. Embry-Riddle Co.*, 63 Fed. Supp. 992.

The decisions cited by plaintiffs are not in conflict with our conclusion here. *Bell v. Porter*, 159 F. 2d 117, contains language favorable to plaintiffs, but, for aught that appears, in that case the appellants were independent contractors, with power to employ and discharge their employees without let or hindrance. Our case of *Atlantic Co. v. Walling*, 131 F. 2d 518, holds that the Congress in defining "commerce" intended to give to the term the broadest possible meaning, so as "to include such transactions, conditions and relationships as have been heretofore known and acknowledged as constituting commerce in the Constitutional sense." It nowhere holds, or tends to hold, that the transportation during war of Government owned munitions is "commerce" under the Fair Labor Standards Act.

While we have shown that the plaintiffs may not recover under the Fair Labor Standards Act, they are further precluded from recovery for the reason that the contract was entered into by the War Department and the defendant under the authority of the Act of July 2, 1940, (Public No. 703, 54 Stat. 712), entitled "An Act to expedite the strengthening of the National Defense," and both defendant and its employees are governed by the provisions of this Act.<sup>2</sup>

The appellants were working directly under the supervision and control of the Government. Therefore, under [fol. 255] subsection 4(b) of Section 1, of the Act of July

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the right to pay directly to the persons concerned all sums due from the Contractor for labor, materials, or other charges . . . ."

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" . . . . This contract is authorized by the following laws: The Act of July 2, 1940 (Public No. 703, 76th Congress), the Act of March 1, 1941 (Public No. 11, 77th Congress) and the Act of June 30, 1941 (Public No. 139, 77th Congress) . . . ."

2, 1940, under which they were employed and working,<sup>3</sup> they are precluded from claiming overtime compensation under the Fair Labor Standards Act.

Furthermore, if the defendant was an agent or instrumentality of the United States for the production only of munitions of war, whose employees were paid with funds of the United States, whose hiring and firing had to be with the approval of the United States, who worked in a building belonging to the United States, on materials supplied by and belonging to the United States, and who turned out a product that at all times belonged to the United States, which was delivered without any trade or commerce or transportation occurring; then, under sub-paragraph (d) of Sec. 3 (29 U. S. C. A. 203), whereby the United States is excluded from the operation of the Act, the Act would not be applicable.

On the other hand, if the defendant was not an agency or instrumentality of the United States, and if the munitions were articles of commerce within the contemplation of the Act, and if the United States was not the producer of the munitions, and if sub-paragraph (d) of Sec. 3 of the Act, excluding the United States from its operation, is not applicable; then there would seem to be no escape from [fol. 256] the conclusion that since the finished products and all their ingredients are the property of the United States and delivered to it as the ultimate consumer of the goods, the Act, under sub-paragraph (i) of Sec. 3, would still be inapplicable because the term "goods" "does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof, other than a

• • • • • *Notwithstanding the provisions of any other law, the regular working hours of laborers and mechanics employed by the War Department, who are engaged in the manufacture or production of military equipment, munitions, or supplies shall be eight hours per day or forty hours per week during the period of any national emergency declared by the President to exist: Provided, That under such regulations as the Secretary of War may prescribe, such hours may be exceeded, but compensation for employment in excess of forty hours in any workweek, computed at a rate not less than one and one-half times the regular rate, shall be paid to such laborers and mechanics • • • •*

producer, manufacturer or processor thereof." Since the Government is the ultimate consumer, and since the goods were delivered into its actual physical possession as ultimate consumer, any movement of the goods thereafter by the ultimate consumer over state lines would not relate back and take the goods out of the exception of sub-paragraph (i) of Sec. 3 of the Act. *Divins v. Hazeltine Electronics Corp.*, 163 F. 2d 100.

These employees were put in the munition factories by governmental command on the theory that they were an integral part of the war machine—not because they were an essential part of interstate commerce. We are unwilling, by judicial fiat, to fasten shackles on the nation's feet as it marches to war, nor otherwise to hinder the Government in the exercise of the sovereign function of providing for the common defense unless we are convinced beyond doubt that the commands of Congress inexorably require it.

We find no reversible error in the record and the judgment is therefore Affirmed.

[fol. 257] SIBLEY, Circuit Judge, concurring:

I concur in the judgment of affirmance. If a private corporation had furnished the factory, all tools, and materials, agreed to pay all costs of production plus a fixed fee for goods produced, and exercised the control that the government did in this case, I would have no trouble in holding that the operation was that of the private corporation, and that the contractor was not an independent contractor. As in the case of *St. Johns River Shipbuilding Co. vs. Adams*, — Fed. (2) —, decided herewith, I would prefer to pass over the question of independent contractor, to the question of whether commerce was involved. All the overtime sued for here was earned, if at all, during 1944 and 1945, when the war effort was at its peak, and munitions were produced for immediate use, and under the greatest pressure. I do not think that the government would have committed the business folly of making cost-plus contracts otherwise. As is shown by several Acts passed during the emergency period relating to wages and overtime, all of which deny double damages and attorneys fees where time and a half pay for overtime is provided for, as well as by the retrospective Portal to Portal Act, the United States did not contemplate becoming the penalized

person through cost-plus contracts. While haste was foremost, and cost secondary, I think it clear that no one concerned thought that the work was work in commerce or in producing goods for commerce, or would fall under the peace time Fair Labor Standards Act. Certainly "substandard wages" did not prevail in these public war projects. If the Constitution had vested the war power [fol. 258] in the federal government, and left the regulation of commerce to the States, so that an Act like the Fair Labor Standards Act had been enacted by the States, no one would contend that the war power was circumscribed by the States' commercial legislation. That is because war is not commerce. This case deals with war and not commerce.

**HUTCHESON, Circuit Judge, dissenting:**

I am wholly unable to see how our holding, that appellants, the employees of the Silas Mason Company, were within the coverage of the Fair Labor Standards Act, could possibly be "by judicial fiat, to fasten shackles on the nation's feet while it marches to war, nor otherwise to hinder the Government in the exercise of the sovereign function of providing for the common defense". Standing solitary and alone among my brethren, I hereby disclaim for my brief dissent any purpose to do so.

As I read and understand the Fair Labor Standards Act, it was not enacted to, it does not, fasten shackles on the feet of any. Rather it was enacted to strike from the feet of those who toil the shackles of substandard wages. Sec. 203—Definitions—described "employer" and "employee", "commerce" and "goods" in the widest terms. It does, indeed, exclude from the definition of "employer" the United States, the states or political subdivisions of the states. But there is nothing in it which excludes from the definition "employer" independent contractors producing goods under contract with the United States. Because of its fundamentally remedial purpose and the broad [fol. 259] language it uses, the act should be, it generally has been, construed to give the widest coverage its language will permit:

A study of the record in this case leaves me in no doubt: that the appellants were not employees of the United States; that, on the contrary, they were employees of an independent contractor working under contract with

the United States; that the munitions they were producing were "goods" within the definition of goods as used in the act; and that, unless it can be said that these goods were not being "produced for commerce" within the act's definitions, appellants cannot justly be denied the coverage they seek.

As the act defines it, "Commerce means trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof". I ask upon what permissible theory can it be claimed that appellants are not covered here, when it is conceded that had they been working for a private plant which made munitions for sale and delivery to the United States for war, they would have been. The munitions in both cases would be for purposes of war and not of ordinary trade, but in both cases they would have been produced for transportation from a state to a place outside thereof.

If the United States, as the employer, had manufactured these munitions, certainly appellants would have no standing to invoke the Fair Labor Standards Act, for the very definition of employer excludes the United States. Here the whole elaborate system was designed and operated so that the United States should not be the employer. [fol. 260] This being so beyond question, I find myself wholly unable to agree that employees of Silas Mason Company are not under the act merely because instead of producing ships and clothes and uniforms for use of the armed forces, they were producing munitions.

The briefs of the parties and the briefs filed *amicus curiae* by the Administrator of the Wage and Hour Division have brought forward and discussed all of the applicable decisions. It will advantage no one for me to pile Pelion upon Osa in further citing and discussing them. It will be sufficient for me to say that I find myself in complete agreement with the views expressed in *Bell v. Porter*, 159 F. (2) 117, and that nothing in this case has caused me to withdraw in the slightest from the pronouncements in the opinion of this court in *Atlantic Company v. Walling*, 131 Fed. (2) 518. Standing then not wrapped in the solitude of my own originality but on the solid ground those opinions afford, I can see no reason for isolating appellants from the general mass of em-

ployees in war plants and, because they produced munitions, excluding them from the benefits and protection of the Fair Labor Standards Act. I think the judgment should be reversed. I respectfully dissent from its affirmance.

[fols. 261-268]

**JUDGMENT**

Extract from the Minutes of December 12, 1947

No. 11976

**HARRIS KENNEDY, et al.**

**VERSUS**

**SILAS MASON COMPANY**

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellants, Harris Kennedy, and others, and the surety on the appeal bond herein, Rex Morrisett, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, concurs."

"Hutcheson, Circuit Judge, dissents."

**PETITION FOR REHEARING—Filed December 27, 1947**

[fol. 269]

**ORDER DENYING REHEARING****Extract from the Minutes of January 15, 1948****No. 11976****HARRIS KENNEDY, et al.****VERSUS****SILAS MASON COMPANY**

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Hutcheson, Circuit Judge, dissents."

[fol. 270]

**CLERK'S CERTIFICATE****UNITED STATES OF AMERICA:****UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT**

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 247 to 269 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 11976, wherein Harris Kennedy, et al., are appellants, and Silas Mason Company is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 246 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 19th day of January, A. D. 1948.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)



[fol. 271] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 8, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5487)





